Supreme Court, U.S.
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No. 91-904

In The

Supreme Court of the United States

October Term 1992

CONCRETE PIPE AND PRODUCTS OF CALIFORNIA, INC.,

Petitioner,

vs.

CONSTRUCTION LABORERS PENSION TRUST FOR SOUTHERN CALIFORNIA,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

JOINT APPENDIX
VOLUME II, PAGES 217-433

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Petition For Certiorari Filed December 3, 1991
Certiorari Granted May 26, 1992

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AMERICAN ARBITRATION ASSOCIATION,
ADMINISTRATOR

VOLUNTARY LABOR ARBITRATION TRIBUNAL

IN THE MATTER OF THE ARBITRATION BETWEEN:	
CONSTRUCTION LABORERS PENSION TRUST	NO. 72 621 001 87 MEPP
-AND-	
CONCRETE PIPE & PRODUCTS COMPANY	

THURSDAY, FEBRUARY 18, 1988
10:00 A.M.

443 SHATTO PLACE
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FILE NO.: 15-88

REPORTED BY: ROSEMARY HARRISON
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ALSO PRESENT:

FOR THE FUND: MAREL K. BATES
HERBERT J. KLEIN
DAN O. CONNELL

FOR THE COMPANY: JON L. KING

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* * *

[p. 139] MAREL K. BATES,

CALLED AS AN ADVERSE WITNESS BY THE COMPANY, HAVING BEEN PREVIOUSLY DULY SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

THE ARBITRATOR: OFF THE RECORD.

(DISCUSSION HELD OFF THE RECORD.)

THE ARBITRATOR: LET'S GO BACK ON THE RECORD, PLEASE.

[p. 140] DIRECT EXAMINATION

BY MR. NELSON:

Q FIRST, MR. BATES, WE PROBABLY OUGHT TO HAVE YOU IDENTIFY YOURSELF. WOULD YOU STATE YOUR NAME, PLEASE?

A MY NAME IS MAREL BATES.

Q YOU'RE EMPLOYED BY THE MARTIN SEGAL COMPANY?

A THAT'S CORRECT.

Q THERE'S A DOCUMENT THAT'S BEEN PLACED INTO EVIDENCE THAT PURPORTS TO BE A RESUME OF YOURS.

MR. BEERS: TRUST NUMBER 5 IS WHAT YOU'RE LOOKING AT?

THE WITNESS: YES, THAT'S MY RESUME.

Q BY MR. NELSON: I GUESS BEFORE WE GET INTO THE NITTY-GRITTY OF THIS, I THINK ONE OF THE THINGS MR. BEERS MENTIONED I'LL ASK YOU ABOUT. I THINK YOU MENTIONED THAT MARTIN SEGAL HAS ABOUT 20 TO 30 PERCENT OF THE MARKET SHARE OF MULTI-EMPLOYER PENSION PLANS?

A I BELIEVE THAT'S CORRECT.

Q I TAKE IT THEN THAT YOU'VE TESTIFIED ON A NUMBER OF OCCASIONS ON BEHALF OF VARIOUS MULTI-EMPLOYER TRUST FUNDS IN WITHDRAWAL LIABILITY HEARINGS?

A YES.

Q DO YOU KNOW APPROXIMATELY HOW MAY TIMES?

[p. 141] A THREE OR FOUR.

Q WITH RESPECT TO THE ACTUARIAL TECHNIQUES OR PROCESSES THAT YOU USE IN A MULTI-EMPLOYER PLAN, DID THOSE PROCESSES OR TECHNIQUES VARY FROM THOSE THAT WOULD BE USED ON A NONMULTI-EMPLOYER PLAN?

A TO A LIMITED EXTENT, YES.

Q TO WHAT EXTENT WOULD THEY BE DIFFERENT?

A I ASSUME YOU MEAN PRIMARILY WITH RESPECT TO WITHDRAWAL LIABILITY?

Q YES.

A A NONMULTI-EMPLOYER PLAN WOULDN'T HAVE ANY WITHDRAWAL LIABILITY, EXCEPT LIABILITY POSSIBLY TO THE P.B.G.C., WHICH GUARANTEES BENEFITS FOR PLAN TERMINATIONS.

THE ASSUMPTIONS FOR MULTI-EMPLOYER PLANS TEND TO DIFFER SLIGHTLY FROM ASSUMPTIONS FOR PLANS WHOSE BENEFITS ARE RELATED TO SALARY, BECAUSE A PLAN WHOSE BENEFIT IS RELATED TO SALARY IS PARTIALLY INDEXED, YOU

MIGHT SAY, FOR INFLATION. AS A PERSON EARNS HIGHER SALARY TOWARDS HIS RETIREMENT YEARS THE BENEFIT INCREASE FOR THAT HIGHER VALUE OF SERVICE IS AUTOMATICALLY BUILT INTO THE PLAN'S FORMULA.

BUT A MULTI-EMPLOYER PLAN TYPICALLY, LIKE THIS PLAN, ITS BENEFIT MULTIPLIER IS A FLAT DOLLAR PER YEAR OF SERVICE FORMULA, WHICH IS FREQUENTLY INCREASED. SO THOSE INCREASES CANNOT BE FUNDED FOR [p. 142] IN ADVANCE UNDER I.R.S. RULES, BUT THEY ARE REAL AND THEY EXIST. AND THE WAY OF PARTIALLY FUNDING FOR THEM COMMON IN THE INDUSTRY IS TO USE A SLIGHTLY LOWER INTEREST ASSUMPTION FOR PLANS WHOSE BENEFITS ARE NOT RELATED TO SALARY.

Q WOULD THERE HAVE BEEN ANY OTHER DISTINCTIONS BETWEEN THE ACTUARIAL ASSUMPTIONS YOU USED FOR MULTI-EMPLOYER PLAN AND FOR A SINGLE EMPLOYER PLAN, OTHER THAN THOSE YOU'VE ALREADY TESTIFIED ABOUT?

A THE CRITICAL DIFFERENCE FOR ANY COLLECTIVELY BARGAIN PLAN, OR AT LEAST COLLECTIVELY BARGAIN PLANS WHOSE CONTRIBUTION RATES HAVE BEEN NEGOTIATED, IS A DIFFERENCE IN MOST SINGLE EMPLOYER PLANS. THE EMPLOYER HAS THE ABILITY TO CONTRIBUTE WHAT IT WANTS WITHIN THE MAXIMUM AND MINIMUM REQUIREMENTS OF LAW TO THE FUND DURING THE YEAR. BUT COLLECTIVELY BARGAIN PLAN LIKE THIS ONE, THE CONTRIBUTIONS ARE SET IN THE COLLECTIVE

BARGAINING PROCESS AND ARE NOT EASILY CHANGED THEREAFTER UNTIL THE NEXT ROUND OF COLLECTIVE BARGAINING, AND SOMETIMES NOT EVEN THEN.

Q WOULD THE PROCESS BY WHICH AN ACTUARY WOULD VALUE THE ASSETS CHANGE BETWEEN A MULTI-EMPLOYER PLAN AND A SINGLE EMPLOYER PLAN?

A NOT NECESSARILY.

Q WOULD THAT SAME SIMILARITY HOLD TRUE BY THE MANNER IN WHICH THE ACTUARY WOULD VALUE THE LIABILITY [p. 143] BETWEEN A MULTI-EMPLOYER PLAN AND A SINGLE EMPLOYER PLAN?

A THE LIABILITIES FOR WHICH PURPOSE? FOR THE PURPOSE OF WITHDRAWAL LIABILITY?

Q FOR PURPOSES OF ASSESSING WHAT THE PRESENT VALUE VESTED BENEFITS WOULD BE.

A IT WOULD DEPEND ON WHAT PURPOSE. THERE ARE A NUMBER OF PURPOSES FOR WHICH AN ACTUARY CALCULATES THE PRESENT VALUE OF VESTED BENEFITS. ON THE SINGLE EMPLOYER SIDE, YOU HAVE THE ANNUAL REPORTING ON SCHEDULE "B" OF FORM 5500, WHICH IS THE FUND'S ANNUAL REPORT TO THE GOVERNMENT. YOU ALSO HAVE ON THE SINGLE EMPLOYER SIDE REQUIREMENTS FOR DISCLOSURE FOR THE FINANCIAL ACCOUNTING STANDARDS BOARD'S STATEMENTS, 35 AND NOW 87, WHICH ARE ON A DIFFERENT SET OF ASSUMPTIONS USUALLY. FOR MULTI-EMPLOYER

PLANS, YOU HAVE WITHDRAWAL LIABILITY CALCULATIONS.

Q I NOTICE THAT MANY OF THE REPORTS IN JOINT EXHIBIT 7-A THROUGH -F SEEM TO BE AUTHORED BY A FELLOW BY THE NAME OF JAMES F. LAWS, L-A-W-S. DO YOU KNOW MR. LAWS?

A YES.

Q WHO IS HE?

A HE IS A SENIOR ACTUARY OF THE SEGAL COMPANY. HE WAS THE CHIEF ACTUARY IN THE LOS ANGELES OFFICE FROM 1977, ROUGHLY, TO 1984. FROM 1984 TO [p. 144] '86, HE CONTINUED AS A SENIOR ACTUARY IN THE LOS ANGELES OFFICE AFTER I HAD BEEN NAMED THE HEAD OF THE ACTUARIAL DEPARTMENT. THAT CHANGE WAS DUE PRIMARILY TO HIS RESPONSIBILITIES, WHICH INCREASINGLY REQUIRED HIM TO BE OUT OF THE OFFICE AS A CONSULTANT. SINCE 1986 HE HAS BEEN THE HEAD OF THE MARTIN SEGAL COMPANY'S NORTHEASTERN ACTUARIAL DEPARTMENT LOCATED IN BOSTON.

Q MR. LAWS IS STILL WITH MARTIN E. SEGAL COMPANY?

A THAT IS CORRECT.

Q I WANT TO MAKE SURE THAT WE'RE ALL OPERATING FROM THE SAME OPERATIVE NEXUS OF TERMINOLOGY HERE TO THE EXTENT WE CAN, SO I'M GOING TO TRY OUT SOME DEFINITIONS ON YOU TO SEE IF A LAWYER'S DEFINITION IS PRETTY CLOSE TO AN ACTUARY'S, IF I MIGHT.

THE TERM "MARKET VALUATION" HAS BEEN USED, OR FOR MARKET VALUE AS IT RELATES TO ASSETS HAS BEEN USED IN A COUPLE OF OCCASIONS IN THE REPORTS IN JOINT EXHIBIT 7. WOULD MARKET VALUATION REFER TO THE AMOUNT THAT THE ASSET WOULD BRING IF SOLD ON THE MARKET IMMEDIATELY?

MR. BEERS: OBJECTION. IF YOU'RE REFERRING TO A PARTICULAR PLACE, IT MIGHT HAVE DIFFERENT MEANINGS. ARE YOU REFERRING TO A PARTICULAR PLACE IN THOSE DOCUMENTS?

[p. 145] MR. NELSON: I WASN'T. I WAS TRYING TO GO FOR A GENERAL DEFINITION.

MR. BEERS: IT'S JUST THAT YOU PREFACED IT WITH A PARTICULAR REFERENCE TO IT BEING IN DOCUMENTS. I'M SURE THERE ARE LOTS OF DIFFERENT DEFINITIONS OF MARKET VALUE THAT A PERSON COULD COME UP.

Q BY MR. NELSON: I GUESS THE TERM "MARKET VALUE" IS APPLIED TO ASSETS OF THE TRUST.

THE ARBITRATOR: DOES THAT HELP YOUR OBJECTION?

MR. BEERS: IF THE WITNESS UNDERSTANDS THE QUESTION.

THE WITNESS: THE MARKET VALUE ASSETS FOR ALL PURPOSES FOR THE TRUST IS THE SAME AS OF A PARTICULAR POINT IN TIME, AND IT'S CALCULATED BY THE ACCOUNTANTS AND THEIR AUDITORS GENERALLY. AND IT IS OBTAINED, FOR THE MOST PART, BY TAKING THE DECEMBER 31 CLOSING

QUOTATIONS ON THE NEW YORK STOCK EXCHANGE, THE BOND EXCHANGE, AND SO ON AND SO ON, FOR THE KINDS OF ASSETS THEY HOLD, PLUS APPRAISED VALUE OF REAL ESTATE.

Q BY MR. NELSON: WE'RE TALKING THEN ESSENTIALLY ABOUT WHAT THE ASSET WOULD BRING IF PUT ON THE MARKET AT ANY GIVEN POINT IN TIME?

A YES. THE NECESSITY IF YOU SELL A LARGE BLOCK OF STOCKS, THAT SALE ITSELF MAY DEPRESS THE PRICE SOMEWHAT, BUT OTHER THAN THAT –

[p. 146] MR. BEERS: YOU'RE SAYING THAT'S NOT INCLUDED.

THE WITNESS: THAT'S NOT REFLECTED IN THAT FACTOR, YES.

MR. BEERS: THANK YOU.

Q BY MR. NELSON: THERE ARE ALSO REFERENCES TO ASSUMPTIONS IN SOME OF THE ACTUARIAL REPORTS AS BEING EITHER LIBERAL OR CONSERVATIVE. FIRST OF ALL, I GUESS WOULD THE ADJECTIVE LIBERAL OR CONSERVATIVE DIFFER DEPENDING UPON WHAT ASSUMPTION YOU WERE APPLYING IT TO IN TERMS OF WHEN IT WOULD TEND TO INCREASE WITHDRAWAL LIABILITY OR DECREASE WITHDRAWAL LIABILITY?

A FOR ACTUARIAL PURPOSES, THE TERM "CONSERVATIVE" GENERALLY REFERS TO FUNDING METHODS, ASSUMPTION VALUATION METHODS, ET CETERA, WHICH CAUSE MORE OF THE ACTUAL CALCULATED COST OF THE PLAN TO BE ASSIGNED

TO THE CURRENT PERIOD AND PRIOR PERIODS AND RELATIVELY LESS TO FUTURE PERIODS. WHICH MEANS THE LIABILITY AT A PARTICULAR POINT IN TIME UNDER A MORE CONSERVATIVE ASSUMPTION FUNDING METHOD, ET CETERA, WOULD BE HIGHER IF THAT ASSUMPTION, ET CETERA, WERE MORE CONSERVATIVE, AND IT WOULD BE LOWER IF IT WAS LESS CONSERVATIVE.

THE WORD "LIBERAL" IS USED FOR SO MANY DIFFERENT CONFUSING THINGS THAT I WILL TRY TO AVOID USING IT, AND THING'S MORE CONSERVATIVE OR LESS [p. 147] CONSERVATIVE.

Q ALL RIGHT. WITH RESPECT TO JOINT EXHIBIT 7 –

THE ARBITRATOR: THAT'S THIS ONE (INDICATING).

Q BY MR. NELSON: I GUESS "C," WHICH WOULD BE THE MARCH 23, 1983 MEMORANDUM REGARDING WITHDRAWAL LIABILITY. TO YOUR KNOWLEDGE, DID THE BOARD OF TRUSTEES OF THE CONSTRUCTION LABORERS PENSION TRUST FOR SOUTHERN CALIFORNIA ADOPT OR INCORPORATE YOUR RECOMMENDATIONS INTO THEIR STATED FUND PRACTICES FOR CALCULATING WITHDRAWAL LIABILITY?

A MY UNDERSTANDING IS THAT THEY DID.

Q WOULD THE SAME HOLD TRUE FOR EXHIBIT 7-D, WHICH IS A REPORT ON WITHDRAWAL LIABILITY DATED JANUARY 1, 1982?

A YES.

MR. NELSON: COULD YOU READ BACK THE QUESTION TO ME?

(RECORD READ AS FOLLOWS:

"QUESTION: WOULD THE SAME HOLD TRUE FOR EXHIBIT 7-D, WHICH IS A REPORT ON WITHDRAWAL LIABILITY DATED JANUARY 1, 1982?

"ANSWER: YES.")

MR. NELSON: AND THE QUESTION THAT REFERS TO.

(RECORD READ AS FOLLOWS:

"I GUESS "C" WOULD BE THE MARCH 23, [p. 148] 1983 MEMORANDUM REGARDING WITHDRAWAL LIABILITY. TO YOUR KNOWLEDGE, DID THE BOARD OF TRUSTEES OF THE CONSTRUCTION LABORERS PENSION TRUST FOR SOUTHERN CALIFORNIA ADOPT OR INCORPORATE YOUR RECOMMENDATIONS INTO THEIR STANDARD FUND PRACTICES FOR CALCULATING WITHDRAWAL LIABILITY?

"ANSWER: MY UNDERSTANDING IS THAT THEY DID.")

Q BY MR. NELSON: I GUESS, MR. BATES, I OUGHT TO CORRECT MYSELF. I USED THE TERM "YOUR." I UNDERSTAND THAT THOSE ARE THE MARTIN SEGAL COMPANY RECOMMENDATIONS IN EXHIBIT "C" AND "D." JUST TO MAKE THE RECORD CLEAR, I WASN'T TRYING TO ATTRIBUTE THEM TO YOU PERSONALLY.

A YES, THANK YOU.

Q HAVE YOU REVIEWED THE DEMOGRAPHIC ASSUMPTIONS WHICH THE PLAN USES IN DETERMINING THE ACTUARIAL VALUATION FOR 1980?

A YES.

Q WHEN YOU PERFORMED THAT REVIEW, DID YOU REVIEW EACH INDIVIDUAL ASSUMPTION OR DID YOU REVIEW THE ASSUMPTIONS IN THE AGGREGATE?

A I REVIEWED THE ASSUMPTIONS IN THE AGGREGATE. YOU MUST REMEMBER THAT THIS REVIEW TOOK PLACE RECENTLY, SINCE I WAS NOT THE ACTUARY AT THAT TIME.

[p. 149] Q WITH RESPECT TO THE DEMOGRAPHIC ASSUMPTIONS IN THE 1980 ACTUARIAL REVIEW, CAN YOU DETERMINE BY EXAMINING EACH OF THE DEMOGRAPHIC ASSUMPTIONS WHETHER THEY ARE INDIVIDUALLY CONSERVATIVE OR INDIVIDUALLY MORE LIBERAL?

A REFERRING TO EXHIBIT "E," THE VALUATION AND REVIEW AS OF THE APPROPRIATE DATE.

MR. BEERS: AS COMPARED TO WHAT? YOU'RE SAYING WHETHER THEY'RE CONSERVATIVE OR LIBERAL. DOES IT NEED TO BE COMPARED TO SOMETHING?

MR. NELSON: THANK YOU. LET'S DO IT THIS WAY.

Q WHAT WOULD BE THE DEMOGRAPHIC ASSUMPTIONS IN EXHIBIT "E"?

A THE ONES THAT ARE RELEVANT TO WITHDRAWAL LIABILITY ARE THE – ARE LISTED IN EXHIBIT 2 TOWARD THE BACK.

Q THAT'S EXHIBIT 2 OF JOINT EXHIBIT 7-E?

A YES. THE MORTALITY TABLES FOR NONDISABLED AND DISABLED LIVES, THE RETIREMENT AGE, AND A COUPLE OF ASSUMPTIONS THAT HAVE TO DO WITH INCOMPLETE DATA IS AN ASSUMPTION WITH RESPECT TO EMPLOYEES WITH UNKNOWN BIRTHDATES, AND AN ASSUMPTION WITH RESPECT TO YEARS OF UNRECORDED PAST SERVICE CREDIT.

Q ARE EACH OF THOSE DEMOGRAPHIC ASSUMPTIONS REASONABLE INDIVIDUALLY?

A THEY ARE REASONABLE INDIVIDUALLY IN MY [p. 150] OPINION. THE MORTALITY TABLE, IN PARTICULAR, IS – IS CERTAINLY NONCONSERVATIVE, AND IT WAS CHANGED SHORTLY AFTER THIS REPORT. AND IT WAS CHANGED AGAIN LATER IN THE DIRECTION OF MORE CONSERVATISM.

Q WITH RESPECT TO THE ECONOMIC ASSUMPTIONS WHICH WOULD HAVE AN IMPACT ON WITHDRAWAL LIABILITY, CAN YOU TELL US WITH RESPECT TO EXHIBIT "E" WHAT THE ECONOMIC ASSUMPTIONS BY CATEGORY WOULD BE?

A THE ONLY ECONOMIC ASSUMPTIONS ARE THE ASSET VALUE AND THE NET INVESTMENT RETURN THAT RELATE TO WITHDRAWAL LIABILITY, HOWEVER YOU TREAT ADMINISTRATIVE EXPENSES.

Q IN YOUR OPINION, IS THE ASSET VALUATION VIEWED IN ITS OWN RIGHT ISOLATED FROM THE OTHER ECONOMIC ASSUMPTIONS REASONABLE?

A WELL, IN EXHIBIT 2 WE HAVE TWO ASSET VALUATION METHODS. THE ONE THAT'S DESCRIBED UNDER THE CATEGORY "ASSET VALUATION," DESCRIBES AN ADJUSTED METHOD WHOSE OBJECTIVE IS TO SMOOTH INVESTMENT GAINS AND LOSSES, AND, THEREFORE, SCHEDULED COST TO THE PLAN. THAT WAS NOT USED FOR THE WITHDRAWAL LIABILITY, BUT RATHER THE MARKET VALUE INVESTMENTS WAS USED, WHICH IS DESCRIBED LOWER ON THAT PAGE. DID I ADDRESS YOUR QUESTION?

Q I DON'T THINK SO. IS THAT ASSET VALUATION THAT YOU JUST DESCRIBED AS BEING AN ADJUSTED METHOD [p. 151] TO SMOOTH INVESTIGATING LOSSES REASONABLE IN ITS OWN RIGHT?

A THAT'S A REASONABLE WAY TO VALUE ASSETS FOR THE ONGOING ACTUARIAL VALUATIONS OF THE PLAN.

Q YOU MENTIONED THERE WAS ANOTHER ASSET VALUATION, I THINK ON THE SAME PAGE THAT YOU WERE REFERRING TO, THAT HAD THE METHOD FOR ADJUSTING, TO SMOOTH OUT THE INVESTMENT GAINS AND LOSSES. WHAT ASSET VALUATION ARE YOU REFERRING TO?

A THAT'S SIMPLY TO USE THE MARKET VALUE.

Q IS THE USE OF THE MARKET VALUE ASSUMPTION REASONABLE IN ITS OWN RIGHT?

A YES.

Q WOULD YOU CONSIDER BOTH OF THE ASSET VALUATION ASSUMPTIONS THAT YOU'VE JUST DESCRIBED TO BE CONSERVATIVE?

A NEITHER IS INHERENTLY CONSERVATIVE OR NONCONSERVATIVE.

THE ARBITRATOR: I DIDN'T GET THAT.

THE WITNESS: I SAID NEITHER IS INHERENTLY CONSERVATIVE OR NONCONSERVATIVE.

Q BY MR. NELSON: WITH RESPECT TO THE INVESTMENT RETURN, ECONOMIC ASSUMPTION, IS IT YOUR OPINION THAT THAT RETURN IS REASONABLE ON ITS OWN RIGHT - EXCUSE ME, LET ME REPHRASE THE QUESTION.

WITH RESPECT TO THE INVESTMENT RETURN [p. 152] ECONOMIC ASSUMPTION AS IT RELATES TO WITHDRAWAL LIABILITY -

MR. BEERS: TO USE THE EXACT TERMS IN THE REPORT THAT WE'VE BEEN REFERRING TO, YOU MEAN THE NET INVESTMENT RETURN?

MR. NELSEN: I BELIEVE THAT'S CORRECT.

Q IS THE NET INVESTMENT RETURN ASSUMPTION REASONABLE IN ITS OWN RIGHT?

Q YES, THE SIX-PERCENT ASSUMPTION IS REASONABLE FOR THE PURPOSE FOR WHICH IT IS USED. THE INVESTMENT RETURN ASSUMPTION USED FOR

CALCULATION OF WITHDRAWAL LIABILITY IS INDICATED ON PAGE 3 OF EXHIBIT 2, AND HAS BEEN ALREADY DESCRIBED BY BOTH COUNSEL.

Q YOU MENTIONED ANOTHER ECONOMIC ASSUMPTION THAT HAD TO DO WITH ADMINISTRATIVE EXPENSES. CAN YOU TELL US WHERE THAT'S LOCATED IN EXHIBIT 7-E?

A IT'S IN THE MIDDLE OF PAGE 2 OF EXHIBIT 7-E, FOR PURPOSES OF THE ONGOING VALUATION OF THE PLAN. HOWEVER, FOR PURPOSES OF WITHDRAWAL LIABILITY, THE ADMINISTRATIVE EXPENSES, WHICH FOR THE RECORD WERE PROJECTED TO BE ONE MILLION TWO HUNDRED THOUSAND IN 1981, THOSE ADMINISTRATIVE EXPENSES ARE NOT INCLUDED EXPLILCITLY IN THE CALCULATION OF WITHDRAWAL LIABILITY. RATHER, THEY ARE REFLECTED IMPLICITLY BY USING INTEREST ASSUMPTIONS LOWER THAN WHAT ONE [p. 153] ACTUALLY EXPECTS THE FUND TO YIELD.

Q WITH RESPECT TO THE ECONOMIC ASSUMPTION COVERING ADMINISTRATIVE EXPENSES, IS IT YOUR OPINION THAT THE ASSUMPTION USED IN JOINT EXHIBIT 7-E THAT YOU'VE JUST BEEN DESCRIBING IS REASONABLE IN ITS OWN RIGHT?

A YES.

Q MR. BATES, AS WE DEAL IN THIS DAY OF THE HEARING WITH WHETHER A PARTICULAR ACTUARIAL ASSUMPTION IS REASONABLE OR NOT, IS IT

FAIR TO SAY THAT THERE IS A RANGE OF REASONABLENESS AS APPLIED TO ANY GIVEN ACTUARIAL ASSUMPTION?

A PRECISELY. AND TO THE COMBINATION OF ASSUMPTIONS.

Q TO THE BEST OF YOUR KNOWLEDGE, DO THE INDIVIDUAL ACTUARIAL ASSUMPTIONS USED FOR THE 1980 VALUATION REVIEW, WHICH I BELIEVE IS EXHIBIT 7-E, REFLECT THAT EACH OF THE INDIVIDUAL ASSUMPTIONS USED IS REASONABLE IN ITS OWN RIGHT?

MR. BEERS: CAN YOU RESTATE THE QUESTION SO I CAN GET THE FULL CONTEXT OF IT, OR MAYBE READ IT BACK?

MR. NELSON: WHY DON'T I RESTATE IT.

MR. BEERS: ALL RIGHT.

Q BY MR. NELSON: IN USING THE ACTUARIAL ASSUMPTIONS IN EXHIBIT 7-E, IS IT MARTIN SEGAL'S PRACTICE TO USE ONE LESS CONSERVATIVE ASSUMPTION TO [p. 154] OFFSET A MORE CONSERVATIVE ASSUMPTION FOR PURPOSES OF ARRIVING AT A SET OF ASSUMPTIONS THAT ARE REASONABLE IN THE AGGREGATE?

A TO SOME EXTENT, YES.

Q TO WHAT EXTENT?

A WELL, THE MORTALITY TABLE THAT WE USE GENERALLY IS REFLECTIVE OF MORTALITY

EXPECTED IN THE VERY NEAR FUTURE FOR PENSIONERS ON THE ROLLS. BUT WE KNOW THAT MORTALITY IMPROVEMENT CONTINUES, AND THE NONCONSERVATISM OF NOT ANTICIPATING MORTALITY IMPROVEMENTS IS OFFSET TO SOME EXTENT, NEVER STATED BY SOME CONSERVATISM IN THE NET INVESTMENT RETURN.

Q LET ME DIRECT YOUR ATTENTION TO JOINT EXHIBIT 7-E. TOWARDS THE END OF THAT EXHIBIT THERE'S AN ACTUARIAL VALUATION CERTIFICATE DATED APRIL 10, 1981, AND I WANT TO SPECIFICALLY DIRECT YOUR ATTENTION TO EXHIBIT 2 OF THAT ACTUARIAL VALUATION CERTIFICATE. CAN YOU FIND THAT?

A YES.

MR. BEERS: I HAVEN'T FOUND THE RIGHT PLACE.

THE ARBITRATOR: YOU'RE STILL TALKING ABOUT EXHIBIT "E," AREN'T YOU?

THE WITNESS: YES.

THE ARBITRATOR: I'LL FIND IT.

(BRIEF PAUSE.)

THE ARBITRATOR: GO AHEAD.

[p. 155] Q BY MR. NELSON: SPECIFICALLY AT THE TOP OF PAGE 2 OF EXHIBIT 2, THERE'S A REFERENCE TO AMOUNT OF UNRECORDED PAST SERVICE CREDIT FOR NONRETIRED PARTICIPANTS. CAN YOU FIND THAT?

A YES.

Q ARE YOU AWARE OF A STUDY THAT MARTIN SEGAL HAS CONDUCTED TO DETERMINE THE DATA THAT'S CONTAINED IN THAT PARTICULAR TABLE?

A YES.

Q WHAT IS THAT STUDY?

A THERE WAS A STUDY CONDUCTED SHORTLY AFTER WE BECAME THE ACTUARIES FOR THE FUND, AGAIN, WHEN WE OBSERVED THAT RETIREES WERE SHOWING UP WITH BENEFITS GREATER THAN WAS PROJECTED, BASED ON THE CENSUS DATA FROM THE YEAR BEFORE. AND WE INVESTED THE SITUATION AND DISCOVERED THAT MANY, OR PERHAPS A GREAT NUMBER OF PARTICIPANTS, HAD NO RECORDED PAST SERVICE CREDIT, AND THIS WAS THE EXPLANATION FOR THIS FACTOR.

SO WE ASKED THE THEN ADMINISTRATORS OF THE PLAN, A FIRM CALLED U.S. ADMINISTRATORS, TO COLLECT A SAMPLE OF RECORDS, TO EXAMINE THOSE RECORDS FOR THE INITIATION DATE IN THE UNION, AND THE AMOUNT OF PAST SERVICE CREDITS THAT WERE SHOWN. AND COMPARING THE INITIATION DATE IN THE UNION WITH THE FIRST PLAN YEAR OF THE PLAN, WHICH WAS 1962 FOR THE MAJORITY OF PEOPLE, THEY CALCULATED WHAT WAS THE MAXIMUM NUMBER [p. 156] OF YEARS OF PAST SERVICE THAT THESE INDIVIDUALS COULD HAVE HAD IF THEY HAD SATISFIED THE REQUIREMENTS FOR EARNING PAST SERVICE.

AND I – AS I SIT HERE, I'M NOT EXACTLY SURE WHAT THE RULES ARE, BUT THEY ARE USUALLY VERY GENEROUS. I THINK THE RULES USUALLY ARE THAT YOU GOT A YEAR OF PAST SERVICE CREDIT IF YOU WORKED OR COULD VERIFY THAT YOU WORKED EIGHT HOURS DURING THE YEAR IN COVERED EMPLOYMENT, AND IF YOUR UNION MEMBERSHIP REMAINED IN FORCE, PROVIDED, UNDER THE PLAN, THAT YOU THEN WORKED AT LEAST A TOTAL OF 700 HOURS DURING THE PERIOD 1962 TO 1967. THAT, I THINK, IS THE REQUIREMENT FOR HAVING PAST SERVICE CREDIT.

SO U.S. ADMINISTRATORS PROVIDED A SURVEY, I BELIEVE THE NUMBER OF RECORDS WAS 469 RECORDS, AND EXAMINED THE NUMBER OF PAST SERVICE CREDITS FOR THOSE RECORDS THAT APPEARED TO BE MISSING. AND THEN THIS 543,321 THAT YOU SEE IN EXHIBIT 2 WAS OUR EFFORT TO REPRODUCE WITH A MECHANICAL RULE WHAT THEY HAD DISCOVERED WITH THEIR SAMPLING TECHNIQUE.

WE CALCULATED THE AVERAGE NUMBER OF YEARS, APPARENTLY MISSING FOR EACH OF THESE YEAR BIRTH GROUPS, REDUCE THEM A LITTLE TO ALLOW, BECAUSE THE CALCULATION WAS FOR THE MAXIMUM NUMBER OF YEARS THAT THEY COULD HAVE HAD, SO WE REDUCED THE RESULTS SLIGHTLY, AND CAME UP WITH THESE – THESE ASSUMPTIONS [p. 157] WITH RESPECT TO PAST SERVICE CREDIT. SINCE THAT TIME THESE AMOUNTS HAVE BEEN INCLUDED IN THE CENSUS DATA THAT'S PROVIDED TO US BY OUR INSTRUCTION, BY

THE PLAN ADMINISTRATOR, ALWAYS WITH THE PROVISO THAT THESE ARE NOT APPLIED UNLESS THE INDIVIDUAL HAD AT LEAST 700 HOURS IN THE PERIOD 1962 TO 1967.

Q FIRST OF ALL, IS THE TABLE THAT'S AT THE TOP OF PAGE 2 OF EXHIBIT 2 TOWARDS THE END OF JOINT EXHIBIT 7-E, DOES THAT TABLE REPRESENT SOME SORT OF ACTUARIAL ASSUMPTION THAT MARTIN SEGAL HAS MADE?

A YES. I WOULD TEND TO CALL IT AN ASSUMPTION WITH RESPECT TO INCOMPLETE DATA, BUT THE ACTUARIES MADE IT BASED ON THIS SURVEY THAT I DESCRIBED.

Q SO THAT EACH PARTICIPANT WHO WAS BORN DURING THE YEARS 1912 TO 1916 IS PRESUMED TO CARRY FIVE ADDITIONAL YEARS OF UNRECORDED CREDIT AS VESTED CREDIT FOR PURPOSES OF THE TOTAL AGGREGATE AMOUNT OF VESTED LIABILITIES?

MR. BEERS: I BELIEVE THERE'S A SECOND REQUIREMENT TOO.

THE WITNESS: LET ME HANDLE THIS.

MR. BEERS: SURE.

THE WITNESS: IF HE HAS NOT RETIRED OR IF HE WORKED THE 700 HOURS DURING THE PERIOD 1962 TO 1967 AND DID NOT SUBSEQUENTLY INCUR PERMANENT BREAK, THAT WOULD HAVE CANCELED ALL OF HIS SERVICE.

[p. 158] Q BY MR. NELSON: I GUESS WITH THOSE QUALIFICATIONS, THE ANSWER IS, YES?

A YES.

Q AND THOSE YEARS OF UNRECORDED CREDITS ARE PLACED IN THERE BECAUSE THE RECORDS AREN'T ADEQUATE TO DETERMINE PRECISELY HOW MANY YEARS OF PAST SERVICE CREDIT THE PARTICIPANT WOULD HAVE?

A THAT'S CORRECT. THE RECORDS ARE QUITE POOR WITH RESPECT TO PAST SERVICE CREDIT. THIS IS NOT THOROUGHLY UNHEARD OF IN LARGE MULTI-EMPLOYER PLANS.

Q WITH RESPECT TO THE DISTINCTIONS BETWEEN INDIVIDUALS BORN BETWEEN 1912 AND 1916 AND THOSE INDIVIDUALS BORN BETWEEN 1917 AND 1921, IS THERE ANY STUDY THAT YOU'RE AWARE OF TENDING TO ESTABLISH THAT PARTICIPANTS OF THIS FUND BORN IN THOSE TWO AGE GROUPINGS WOULD TEND TO HAVE THE DIFFERENCE IN UNRECORDED PAST SERVICE CREDITS REFLECTED IN THE TABLE?

A YES. THAT WAS THE RESULT OF THE SURVEY THAT I INDICATED FROM U.S. ADMINISTRATORS.

Q YOU SAID THAT SURVEY WAS DONE SHORTLY AFTER YOU BECAME ACTUARIES FOR THE FUND AGAIN. WHAT YEAR WAS THAT?

A THE SURVEY WAS DONE AS OF DECEMBER 31, 1976.

[p. 159] Q WERE THERE ANY ADDITIONAL SUBSEQUENT SURVEYS PERFORMED?

A NOT UNTIL YESTERDAY WHEN I LOOKED AT A FEW INDIVIDUAL RECORDS AND DETERMINED THAT THE SAME ASSUMPTION STILL SEEMS TO BE REASONABLE. I LOOKED AT A MUCH SMALLER SAMPLE.

Q WITH RESPECT TO THE ORIGINAL SURVEY TAKEN BY U.S. ADMINISTRATORS, ARE YOU AWARE OF ANY GUIDELINES THAT MARTIN SEGAL GAVE TO THE ADMINISTRATOR TO ASSIST THE ADMINISTRATOR IN DETERMINING THE SAMPLE SIZE?

A NO.

Q WERE ANY INSTRUCTIONS, TO THE BEST OF YOUR KNOWLEDGE, GIVEN ON ENSURING THAT THE SAMPLE TAKEN WOULD BE STATISTICALLY SIGNIFICANT?

A I'M NOT AWARE OF IT. I DIDN'T DIRECT THE SURVEY, BUT MY SENSE OF IT IS THAT THE NUMBER OF RECORDS, WHICH I BELIEVE WAS 469, WAS STATISTICALLY SIGNIFICANT FOR THE NUMBER OF PEOPLE WE'RE TALKING ABOUT.

Q WAS THERE A WRITTEN REPORT GENERATED REGARDING THIS SURVEY?

A THE ONLY WRITTEN REPORT I CAN THINK OF WAS THE INSTRUCTIONS TO THE ADMINISTRATOR IN THE FUTURE TO LOAD THESE – THESE AMOUNTS INTO THE PAST SERVICE RECORDS THAT WERE BEING PROVIDED TO US FOR VALUATION PURPOSES.

[p. 160] Q THESE AMOUNTS ARE LOADED INTO THE PAST SERVICE RECORDS NOT ONLY FOR COMPUTING THE NUMBER OF CREDITS, BUT ALSO FOR VESTING PURPOSES, ARE THEY NOT?

A YES, BUT THAT ISN'T TERRIBLY SIGNIFICANT.

Q WITH RESPECT TO THE NUMBER OF CREDITS LOADED IN, IF YOU HAD AN INDIVIDUAL WHO DID NOT HAVE SUFFICIENT YEARS OF SERVICE CREDIT TO VEST PRIOR TO APPLICATION OF THIS UNRECORDED PAST SERVICE CREDIT ASSUMPTION, YOU COULD HAVE INDIVIDUALS WHO WOULD BE UNVESTED, YET SHOW UP ON THE ROLLS AS VESTED EMPLOYEES AFTER THIS UNRECORDED PAST SERVICE CREDIT WAS APPLIED?

A WHEN YOU SAY UNVESTED, YOU MEAN, UNVESTED WITHOUT KNOWLEDGE OF THEIR PAST SERVICE CREDITS?

Q CORRECT.

A I MEAN, IF THEY HAD THEIR PAST SERVICE CREDITS, THEY WOULD BE VESTED. THERE COULD BE A FEW, BUT YOU HAVE TO REMEMBER THAT THIS IS A PERIOD 15 YEARS BEFORE THE VALUATION, WHICH WAS DECEMBER 31, '76. AND WE'RE TALKING ABOUT SERVICE PRIOR TO '62. SO THE MAJORITY OF PEOPLE WHO WERE STILL IN THE CENSUS AS OF DECEMBER '76, EITHER EARNED TEN YEARS OF SERVICE DURING THE PERIOD '62 TO '76, THAT'S A 15-YEAR PERIOD, OR ELSE THEY WERE GONE. SO THAT ADDING VESTING CREDITS, FOR THE MOST PART YOU WOULD [p. 161] BE ADDING TO A

NUMBER WHICH IS ALREADY GREATER THAN TEN, WHICH IS THE ONLY NUMBER THAT MATTERS.

Q THAT LAST ANSWER IS YOUR ASSUMPTION THAT YOU WOULD BE ADDING CREDITS ONTO PEOPLE WHO ARE ALREADY VESTED?

A IT'S - IT'S MY STATEMENT THAT THE MAJORITY OF PEOPLE TO WHOM VESTING SERVICE CREDITS WERE ADDED, WERE ALREADY VESTED.

Q YOU SAID THE MAJORITY OF PEOPLE WERE ALREADY VESTED. IS THERE ANY STUDY WHICH WOULD SUPPORT THAT CONCLUSION?

A I DON'T KNOW OF A WRITTEN STUDY, BUT IF YOU - I'VE NO DOUBT THAT IF YOU LOOK AT INDIVIDUALS WITH INITIATION DATES PRIOR TO 1962, AND THAT'S WHEN WE'RE TALKING ABOUT HERE, WHO ARE STILL ON THE RECORDS OF THE FUND AND ACTIVE IN 1976, RATHER FEW OF THEM WOULD FAIL TO HAVE TEN YEARS OF VESTING SERVICE.

Q PUTTING ASIDE THE VESTING ISSUE FOR A MOMENT, THESE ADDITIONAL CREDITS FOR YEARS OF UNRECORDED SERVICE ARE ESSENTIALLY A FACTOR THAT YOU LOAD IN TO ACCOUNT FOR THE FACT THAT WE DON'T KNOW HOW MANY YEARS OF CREDIT THEY'VE EARNED IN THE PAST?

A THAT'S CORRECT.

Q I TAKE IT, THEN, THAT THE VALUE OF THESE YEARS OF UNRECORDED SERVICE CREDITS WOULD ALSO CARRY [p. 162] FORWARD AND WOULD APPEAR IN ANY UNFUNDED LIABILITY POOLS?

A OF COURSE.

Q A MOMENT AGO YOU MENTIONED A LESS CONSERVATIVE ASSUMPTION REGARDING MORTALITY WOULD TEND TO OFFSET A MORE CONSERVATIVE ASSUMPTION REGARDING THE INTEREST RATE. CAN YOU QUANTIFY WHAT KIND OF PERCENTAGES OF OFFSET YOU'RE TALKING ABOUT?

A NOT – NOT EASILY, NOT ACCURATELY, NOT AS I SIT HERE.

MR. BEERS: ANOTHER QUESTION, ARE YOU TALKING THE ABSTRACT OR ARE YOU TALKING ABOUT THE TRUST HERE? YOU SAID IT IN GENERAL TERMS.

MR. NELSON: I DID SAY IT IN GENERAL TERMS. I'LL TAKE THAT AS AN OBJECTION AND REPHRASE THE QUESTION.

MR. BEERS: SURE.

Q BY MR. NELSON: WITH RESPECT TO SOME PRIOR TESTIMONY THAT YOU GAVE REGARDING WHETHER SOME ASSUMPTIONS USED IN THIS PLAN WERE USED AS AN OFFSET TO OTHER LESS CONSERVATIVE ASSUMPTIONS, IS THERE ANY BASIS BY WHICH YOU CAN QUANTIFY THE EXTENT TO WHICH, SAY, A MORTALITY ASSUMPTION WOULD BE A LITTLE BIT MORE CONSERVATIVE THAN TO THE EXTENT TO WHICH AN INTEREST ASSUMPTION WOULD BE LESS CONSERVATIVE?

A WELL, OCCASIONALLY AND RATHER FREQUENTLY WHEN WE CHANGE AN INTEREST

ASSUMPTION, WE ALSO CHANGE [p. 163] THE MORTALITY TABLE ASSUMPTION, AND OTHER ASSUMPTIONS. AND WE LOOK AT THE RESULTS IN THE AGGREGATE. AND AS I SIT HERE AND RECALL HAVING DONE THAT IN SOME CASES IN THE PAST, MY GUESS WOULD BE THAT, FOR EXAMPLE, CHANGING FROM THE 1971 TABLE TO THE 1983 TABLE, WHICH WE DID JUST IN 1987, MIGHT HAVE SIMILAR EFFECT ON COST AS INCREASING THE INTEREST ASSUMPTION BY MAYBE THREE-TENTHS OR FOUR-TENTHS OF A PERCENT. DON'T HOLD ME TO THAT. BUT THAT'S THE SENSE OF MY ORDER OF MAGNITUDE OF THE DIFFERENCE BETWEEN THOSE TWO PARTICULAR MORTALITY TABLES.

WE ALSO CHANGED MORTALITY TABLE I THINK IN 19 – IN OUR JANUARY 1, 1983 VALUATION. AS YOU SEE THIS TABLE IS THE 1971 TABLE WITH AGES SET FORWARD ONE YEAR FOR PARTICIPANTS. WE REMOVED THE ONE-YEAR AGE SET-FORWARD AT THE SAME TIME THAT WE CHANGED THE INTEREST ASSUMPTION FROM SIX TO SIX-AND-A-HALF PERCENT.

Q WITH RESPECT TO THE INTEREST ASSUMPTIONS FOR CALCULATING WITHDRAWAL LIABILITY, THE TRUST USES TWO DIFFERENT RATES FOR TWO DIFFERENT PURPOSES IN COMPUTING THE WITHDRAWAL LIABILITY; IS THAT CORRECT?

A YES.

Q FOR ASSETS ON HAND, THE INTEREST ASSUMPTION WOULD BE THE APPROPRIATE P.B.G.C. RATES?

A YES, THE P.B.G.C. ASSUMPTION FOR TERMINATING [p. 164] SINGLE EMPLOYER PLANS FOR THE MONTH IN QUESTION. IN THIS CASE, THE MONTH IS DECEMBER. I BELIEVE COUNSEL BEERS MISSPOKE WHEN HE MENTIONED THAT IT WAS AN ANNUAL SURVEY. IT'S ACTUALLY A MONTHLY SURVEY. BUT FOR OUR PURPOSES, ONLY DECEMBER MATTERS.

Q TO THE EXTENT THAT THE VALUE OF THE ASSETS DOES NOT COVER THE PRESENT VALUE OF THE BENEFITS, THE TRUST FUND THEN USES A SIX-PERCENT ASSUMPTION FOR THAT SEPARATE PURPOSE?

A CORRECT.

Q THAT SIX-PERCENT ASSUMPTION IS DERIVED FROM THE FUNDING ASSUMPTION?

A IT IS THE FUNDING ASSUMPTION.

Q IT IS THE FUNDING ASSUMPTION.

WOULD NOT YOU EXPECT THAT THE FUTURE EXPERIENCE WITH RESPECT TO WITHDRAWAL LIABILITY WOULD BE FUNDAMENTALLY DIFFERENT FROM THE FUNDING ASSUMPTION?

A NOT FUNDAMENTALLY DIFFERENT. THE ONLY DIFFERENCE IS THAT THE VESTED LIABILITIES ARE PAID OUT OVER A SLIGHTLY SHORTER PERIOD OF TIME THAN THE NONVESTED LIABILITIES. THE NONVESTED LIABILITIES TEND TO BE FOR YOUNGER PEOPLE. THE NONVESTED LIABILITY'S USUALLY QUITE SMALL.

Q I MAY BE CONFUSED, MR. BATES. LET ME DIRECT YOUR ATTENTION TO EXHIBIT "C." IT WOULD BE THE [p. 165] THIRD PAGE OF THE EXHIBIT. CAN I DIRECT YOUR ATTENTION TO THE FIRST PARAGRAPH AND THE LAST SENTENCE IN THAT PARAGRAPH, WHICH READS, "HOWEVER, FUTURE EXPERIENCE FOR WITHDRAWAL LIABILITY PURPOSES IS DIFFERENT FROM FUTURE EXPERIENCE FOR FUNDING."

IS THAT PARTICULAR STATEMENT CORRECT?

A YES.

Q HOW ARE THEY DIFFERENT?

A WELL, THE REST OF THAT PAGE EXPLAINS. THERE ARE FIVE REASONS WHY THEY'RE DIFFERENT. THE FIRST ONE IS ONE I ALREADY ALLUDED TO. DO YOU WANT ME TO GO THROUGH THE OTHERS?

Q NOT UNLESS THERE'S SOMETHING IN ADDITION TO WHAT'S ON THE PAGE.

A I THINK NOT.

Q IS THE SIX-PERCENT ASSUMPTION USED IN LIEU OF THE P.B.G.C. RATES BECAUSE YOU DON'T HAVE THE WITHDRAWAL LIABILITY PAYMENT IN HAND?

A THAT'S ONE OF THE REASONS.

Q WHAT ARE THE OTHER REASONS?

A WELL, THERE ARE SEVERAL REASONS. ONE IS THE – IS THE FACT, AS INDICATED ON THIS PAGE,

THAT THE WITHDRAWAL LIABILITY PAYMENT SCHEDULE FOR THE EMPLOYER IS - INCLUDES INTEREST AT THE VALUATION INTEREST ASSUMPTION BY STATUTE.

SINCE THE VALUATION OF INTEREST ASSUMPTION [p. 166] IS SIX PERCENT, ONCE YOU'VE DECIDED THAT THE WITHDRAWAL LIABILITY FOR THE EMPLOYER IS "X" DOLLARS, HOWEVER YOU DETERMINE IT, INTEREST IS THEN CHARGED THROUGH THE PAYMENT PERIOD AT THE RATE OF SIX PERCENT. SO THAT'S ONE REASON FOR CONSISTENCY SAKE TO USE SIX PERCENT IN THE VALUATION OF LIABILITIES.

ANOTHER REASON IS THAT THE LANGUAGE IN THE STATUTE CALLING FOR, OR DESCRIBING THE ASSUMPTIONS THAT ARE TO BE USED FOR WITHDRAWAL LIABILITY, INCLUDES THE REQUIREMENT THAT THE ASSUMPTIONS IN THE AGGREGATE BE THE ACTUARY'S BEST ESTIMATE AND REASONABLE IN THE AGGREGATE, ET CETERA, ALL OF WHICH IS EXACTLY THE SAME LANGUAGE THAT'S IN ERISA DESCRIBING THE INTEREST ASSUMPTION THAT IS TO BE USED FOR FUNDING OF THE PLAN.

LET ME - PERHAPS YOU'D BETTER REPEAT THE QUESTION SO I DON'T JUST GO ON WANDERING OFF.

MR. NELSON: PERHAPS WE OUGHT TO HAVE IT READ BACK.

(RECORD READ AS FOLLOWS:

"QUESTION: WHAT ARE THE OTHER REASONS?")

THE WITNESS: SO WHAT ARE THE OTHER REASONS FOR THE ASSUMPTIONS TO BE DIFFERENT?

Q BY MR. NELSON: CORRECT.

A IN THAT CASE, I WAS GIVING REASONS FOR THEM TO BE THE SAME. I'M SORRY.

[p. 167] THE MAJOR OTHER REASONS FOR THEM TO BE DIFFERENT IS IN OUR TREATMENT OF EXPENSES FOR FUNDING PURPOSES, WE SAY, THE EXPECTED EXPENSES FOR NEXT YEAR ARE "X" DOLLARS. FOR WITHDRAWAL LIABILITY PURPOSES WE DON'T DO THAT. WE IMPLICITLY LOAD THE INTEREST ASSUMPTION FOR EXPENSES, AS DOES THE P.B.G.C., AND, OF COURSE, AS DO INSURANCE COMPANIES UPON WHOSE RATES THE P.B.G.C. ASSUMPTIONS ARE BASED.

Q LET ME DIRECT YOUR ATTENTION TO PAGE 3 OF EXHIBIT "C". BENEATH THE NUMBERED PARAGRAPHS, IN APPROXIMATELY THE MIDDLE OF THE NEXT PARAGRAPH, IS A STATEMENT WHICH SAYS, "CONSISTENT WITH THIS IS THE PROVISION UNDER ITEM 2 ABOVE THAT THE WITHDRAWING EMPLOYER WHO PAYS HIS LIABILITY IN A LUMP SUM (SO THAT ALL ASSETS ARE IN HAND) WILL HAVE THE TOTAL LIABILITY CALCULATED USING PLAN TERMINATION INTEREST ASSUMPTIONS."

DOES THAT SENTENCE REFER TO A PRACTICE OF THIS TRUST FUND OF COMPUTING WITHDRAWAL LIABILITY FOR EMPLOYERS WHO PAY IN LUMP SUM BY USING ALL P.B.G.C. RATES?

A I DON'T KNOW. THAT IS, I DON'T KNOW WHETHER THIS FUND HAS A PRACTICE OF DOING THAT.

Q REFERRING TO THE SAME PARAGRAPH IN WHICH THAT PRIOR STATEMENT WAS MADE ON EXHIBIT "C", THE OPENING SENTENCE STATES, AND I QUOTE:

> [p. 168] "THE APPROACH WE ARE PROPOSING ESSENTIALLY TREATS THE WITHDRAWAL OF SINGLE EMPLOYER PLAN TERMINATION FOR THAT PORTION OF THE ASSIGNED BENEFITS THAT COULD BE PURCHASED BY EXISTING ASSETS."

THEN IT GOES ON TO MAKE ANOTHER STATEMENT, AND THEN A REFERENCE TO THE PROVISION THAT THE WITHDRAWING EMPLOYER WHO PAYS HIS LIABILITY IN A LUMP SUM WILL HAVE THE TOTAL LIABILITY CALCULATED USING PLAN TERMINATION INTEREST ASSUMPTIONS. DO YOU KNOW IF THAT RECOMMENDATION WAS EVER ADOPTED BY THE PLAN?

A I DON'T KNOW THAT IT WAS. I SHOULD MENTION, OF COURSE, THAT WHEN WE SAY A LUMP SUM, WE MEAN, IN A LUMP SUM ON OR ABOUT WHEN THE FIRST PAYMENT WOULD BE DUE, NOT, YOU KNOW, SOMETIME LATER.

(BRIEF PAUSE.)

Q BY MR. NELSON: MR. BATES, I BELIEVE YOU SAID THAT YOU DON'T KNOW WHETHER THE TRUST FUND EVER ACTED ON THE RECOMMENDATION THAT YOU TREAT AN EMPLOYER PAYING ONE LUMP SUM WITHDRAWAL LIABILITY AS THOUGH ALL OF THE LIABILITY WERE COMPUTED AT P.B.G.C. RATES. ARE YOU AWARE OF ANY ACTION TAKEN BY THE TRUSTEES TO REJECT THAT RECOMMENDATION?

A I'M NOT. I SHOULD SAY, THAT I WAS NOT PRESENT WHEN THOSE DISCUSSIONS WERE HELD. IT WAS A NUMBER OF YEARS AGO, IF INDEED THERE WERE ANY [p. 169] DISCUSSIONS.

Q MR. BATES, LET ME ASK YOU THIS PARTICULAR QUESTION: DO YOU KNOW WHO MAKES THE CALCULATION REGARDING WITHDRAWAL LIABILITY FOR AN EMPLOYER, INDIVIDUAL EMPLOYER?

A THE FUND. THE FUND OFFICE.

Q WOULD YOU BE REFERRING TO THE PLAN ADMINISTRATOR?

A YES.

Q DO YOU KNOW WHAT GUIDELINES THE PLAN ADMINISTRATOR USES TO MAKE A WITHDRAWAL LIABILITY ASSESSMENT?

A THEY USE THE LIABILITY AMOUNTS AND WORKSHEETS, I BELIEVE, PREPARED BY US, IF THAT'S WHAT YOU MEAN BY GUIDELINES.

Q YOU WOULD THEN COMPUTE, YOU, BEING MARTIN SEGAL, WOULD COMPUTE THE VALUES FOR THE WITHDRAWAL LIABILITY POOLS FOR 1979 AND 1980?

A CORRECT.

Q I TAKE IT, THEN, WHEN YOU'RE COMPUTING THOSE WITHDRAWAL LIABILITY POOLS, YOU DO NOT MAKE THE DISTINCTION BETWEEN AN EMPLOYER WITHDRAWING AND PAYING A LUMP SUM, AND AN EMPLOYER MAKING PAYMENTS OVER TIME?

A THE POOLS DON'T MAKE THAT DISTINCTION, NO.

Q WITH RESPECT TO THE P.B.G.C. INTEREST RATE [p. 170] ASSUMPTIONS, THE P.B.G.C. RATE IS REALLY A RANGE OF RATES, IS IT NOT?

A YES.

Q THAT WOULD BE A RANGE OF RATES OVER TIME, WOULD IT NOT?

A YES.

Q ARE YOU AWARE OF ANY STUDIES COMPARING THE P.B.G.C. INTEREST RATES WITH RATES WHICH A PRIVATE INSURANCE CARRIER WOULD CHARGE TO ASSUME SIMILAR LIABILITIES?

A I'M NOT AWARE OF STUDIES. I'M AWARE OF STATEMENTS THAT – THAT I'VE HEARD ACTUARIES MAKE STATING THAT THEY THOUGHT P.B.G.C. RATES HAD BECOME CONSERVATIVE WITH RESPECT TO ANNUITY PURCHASE RATES.

Q WITH RESPECT TO THE CONSERVATIVE NATURE OF THE P.B.G.C. INTEREST RATES THAT YOU HEARD OTHER ACTUARIES SPEAK, WAS THERE ANY ORDER OF MAGNITUDE DISCUSSED AS TO HOW CONSERVATIVE THE P.B.G.C. RATES WOULD BE AS COMPARED TO A PRIVATE INSURANCE CARRIER?

A NOT MY – MY SENSE OF IT IS THAT THE DIFFERENCE IS NOT GREAT, BUT THAT THE – I DON'T RECALL ANYBODY SAYING THAT THEY WERE AS MUCH AS A HALF OF A PERCENT TOO LOW. MAYBE PEOPLE WERE IMPLYING THAT THEY COULD BE A QUARTER PERCENT TOO LOW, OR SOMETHING LIKE THAT. I DON'T KNOW.

Q YOU DON'T RECALL WHAT PERCENTAGE ORDER OF [p. 171] MAGNITUDE WAS BEING DISCUSSED?

A NO. NO. I MEAN, IF THEY CLAIMED THEY WERE ONE POINT TOO LOW, I THINK I WOULD HAVE REMEMBERED.

Q YOU HAVE AN INDEPENDENT OPINION ON THAT TOPIC?

A ONLY A METHODOLOGICAL ONE, AND THAT IS THAT THEY BASE THEIR RATES ON A SURVEY OF INSURANCE COMPANY PURCHASE RATES, AND THEN TAKE AN AVERAGE. IF YOU WERE TO TAKE THAT SURVEY BECAUSE YOU WANTED TO BUY SOME ANNUITIES, YOU PROBABLY WOULDN'T BUY THE AVERAGE RATE. YOU WOULD BUY THE BEST RATE YOU COULD FIND. SO IN THE SENSE THAT THE

AVERAGE DIFFERS FROM THE BEST RATE, METHODOLOGICALLY YOU WOULD EXCEPT A LITTLE CONSERVATISM TO COME IN THAT WAY.

Q WITH RESPECT TO THE APPLICATION OF THE SIX-PERCENT ASSUMPTION TO THE VESTED LIABILITIES, THAT REPRESENTS THE MORE CONSERVATIVE END TO THE BEST ESTIMATE RANGE, DOES IT NOT?

A IN AND OF ITSELF IT IS A LITTLE CONSERVATIVE. BUT WHEN YOU COMBINE IT WITH THE WAY IT'S USED, CONSIDERING THE IMPACT I MENTIONED ON MORTALITY AND THE FACT THAT IT'S NET OF EXPENSE LOADING, THEN I WOULD SAY IT'S NOT ON THE CONSERVATIVE END. AND PARTICULAR IF YOU'RE TALKING ABOUT WITHDRAWAL LIABILITY. MY UNDERSTANDING IS OTHER PLANS ARE USING THE VALUATION INTEREST [p. 172] ASSUMPTION FOR ALL OF THE LIABILITIES. SO IN THAT SENSE, OUR METHOD TAKEN TOGETHER IS NOT CONSERVATIVE AT ALL.

Q WITH RESPECT TO THE OTHER PLANS THAT USE A SIMILAR INTEREST RATE ASSUMPTION THAT YOU WERE REFERRING TO A MOMENT AGO, ARE THOSE ALL CLIENTS OF MARTIN SEGAL?

A NEARLY ALL CLIENTS OF MARTIN SEGAL USE THE SEGAL METHOD, THIS TWO-TIER METHOD. THE CLIENTS' PLANS THAT I MENTIONED WHO ARE USING THE VALUATION RATE TO ASSESS ALL WITHDRAWAL LIABILITY, VIRTUALLY NONE OF THOSE ARE CLIENTS OF THE SEGAL COMPANY NOW.

Q ARE YOU AWARE OF ANY OTHER ACTUARIAL FIRM THAT HAS A LARGER PERCENTAGE SHARE OF MULTI-EMPLOYER PENSION PLAN MARKET THAN MARTIN SEGAL?

A I'M SURE THERE ARE NONE.

Q DO YOU KNOW WHAT THE MARKET SHARE OF YOUR NEXT HIGHEST COMPETITOR WOULD BE?

A NO. THERE'S A SAYING THAT IN THIS PARTICULAR MARKET, THE MARTIN SEGAL COMPANY IS FIRST AND NO ONE IS SECOND. JUST IN THAT REGARD, I MIGHT MENTION THAT ONE COMPANY HAS BEEN ACTIVELY BUYING UP A LOT OF OTHER COMPANIES AND THEIR SHARE OF THE MARKET MAY HAVE GROWN TO SECOND PLACE. THAT'S THE MERCER, MEIDINGER, HANSEN AND MCGINN COMPANY.

Q THAT COMPANY'S SHARE OF THE MARKET WOULD BE [p. 173] SIGNIFICANTLY LESS THAN THE TEN TO TWENTY PERCENT WHICH MARTIN SEGAL HOLDS?

A YES.

MR. BEERS: I THOUGHT THE EARLIER TESTIMONY WAS 20 TO 30 PERCENT?

THE WITNESS: TWENTY-FIVE TO 30 PERCENT.

MR. BEERS: TWENTY-FIVE TO 30 PERCENT.

MR. NELSON: I'M SORRY.

Q DO YOU HAVE ANY KIND IF A SENSE AS TO WHAT THE MARKET SHARE OF THE MERCER COMPANY WOULD BE?

A. NO.

THE ARBITRATOR: PARDON ME.

(DISCUSSION HELD OFF THE RECORD.)

(SHORT RECESS.)

THE ARBITRATOR: GO RIGHT AHEAD.

Q BY MR. NELSON: WITH RESPECT TO THE INVESTMENT RETURN ASSUMPTION, WE'RE TALKING ABOUT AN INTEREST RATE. AGAIN FOR DEFINITIONAL PURPOSES, ARE WE TALKING ABOUT WHAT WE'RE PROJECTING THE ASSETS WILL EARN BASED UPON MARKET VALUE?

A FOR WITHDRAWAL LIABILITY SO THAT WE GET THE MARKET VALUE PART IN, YEAH, THE ASSETS, INCLUDING THE FUTURE ASSETS AND CONTRIBUTIONS THAT WILL BE COMING IN IN THE FUTURE.

Q SO FOR WITHDRAWAL LIABILITY PURPOSES, WHEN WE TALK ABOUT INVESTMENT RETURN ASSUMPTIONS, WE'RE [p. 174] TALKING WHAT WE'RE PROJECTING THE ASSETS WERE BASED UPON THEIR MARKET VALUE FOR WITHDRAWAL LIABILITY PURPOSES?

A YEAH. AS I MENTIONED THE REMARKS ABOUT EXPENSE LOADING AND THE CONSERVATISM DUE TO THE NONCONSERVATISM AND THE MORTALITY.

MR. BEERS: THE QUESTION IS -

MR. NELSON: THE GENERAL CONCEPT HERE THAT I'M TALKING ABOUT. MORE FOR DEFINITIONAL PURPOSES THAN ANYTHING ELSE.

MR. BEERS: I'M NOT SURE WHETHER THE COMMUNICATION GOT ACROSS IN THE QUESTION WHETHER YOU'RE TALKING ABOUT ALL OF THE WITHDRAWAL LIABILITY RATE, OR JUST THE SIX PERCENT PART OF THE WITHDRAWAL LIABILITY RATE. THE RATE FOR WITHDRAWAL LIABILITY INCLUDES TWO RATES, MELDED TOGETHER.

MR. NELSON: I'M JUST TALKING FOR RIGHT NOW ABOUT AN ASSUMPTION AS TO INVESTMENT RETURN REGARDING COMPUTING WITHDRAWAL LIABILITY.

THE WITNESS: THEN WE'RE TALKING ABOUT FIVE RATES, AND FOUR P.B.G.C. RATES, AND THE SIX PERCENT VALUATION RATE.

MR. BEERS: THAT WAS MY ONLY POINT THAT WHEN YOU'RE TALKING ABOUT WITHDRAWAL LIABILITY, ALL OF THOSE PLUG INTO IT.

MR. NELSON: RIGHT.

[p. 175] Q BUT CONCEPTUALLY WHAT YOU'RE DOING WHEN YOU APPLY AN INVESTMENT RETURN ASSUMPTION RATE OR A GROUP OF RATES, IS TRYING TO DETERMINE WHAT THE ASSETS WILL EARN BASED UPON THEIR MARKET VALUE.

A WELL, I - OUR METHOD CONCEPTUALLY IS CLOSER TO THE NOTION THAT YOU TAKE YOUR

ASSETS AT MARKET VALUE AND BUY ANNUITIES. SO YOU DON'T CARE WHAT THEY'RE GOING TO EARN, BECAUSE THE INSURANCE COMPANIES ARE GOING TO MAKE OR BREAK BECAUSE THEY'LL HAVE THE MONEY ON THE NEW MONEY THAT COMES IN, IT'S - THAT'S THE NET - THE NET RETURN THAT WOULD BE EARNED ON THAT NEW MONEY.

Q THAT NET RETURN WOULD RESPOND GENERALLY TO WHAT WAS TAKING PLACE IN THE MARKETPLACE -

A YES.

Q - FOR THOSE ASSETS?

A YES. THE FUTURE MARKETPLACE.

Q RIGHT.

WOULD YOU EXPECT THE RATE OF RETURN ON THOSE ASSETS IN THE FUTURE MARKETPLACE TO BE HIGHER DEPENDING UPON HOW MUCH RISK YOU WERE WILLING TO ASSUME AND THE ASSETS YOU'RE PURCHASING?

A IN GENERAL, RISKY RETURNS PAY HIGHER RATES OF RETURN OVER LONG ENOUGH PERIODS. STUDIES HAVE SHOWN THAT.

Q I UNDERSTAND YOUR OPINION THAT THE TWO [p. 176] GROUPS OF RATES USED IN WITHDRAWAL LIABILITY CALCULATION, THE P.B.G.C. RATES AND THE SIX PERCENT FUNDING RATE ARE REASONABLE. IS IT YOUR OPINION THAT THEY ARE THE HIGHEST REASONABLE RATE?

A NO.

Q THERE WOULD BE OTHER RATES THAT COULD BE APPLIED THAT WOULD BE HIGHER THAN BOTH THE P.B.G.C. RATE AND THE SIX PERCENT FUNDING RATE WHICH COULD, NEVERTHELESS, BE REASONABLE IN PURPOSES OF COMPUTING THE WITHDRAWAL LIABILITY?

A IF YOU MEAN HIGHER THAN THE P.B.G.C. RATE AND APPLIED TO THE ENTIRE LIABILITY, I HAVE A PROBLEM WITH THAT. I THINK THAT WOULD NOT BE REASONABLE ABSENT AN OFFER TO PAY THE LIABILITY IN A LUMP SUM, BECAUSE YOU JUST CAN'T INVEST IN RATES WITH MONEY THAT YOU DON'T HAVE.

Q ARE THE P.B.G.C. AND FUNDING RATES ALSO APPLIED TO COMPUTE THE VALUE OF THE ASSETS ON HAND TO PAY BENEFITS?

A THE VALUE OF ASSETS ON HAND IS COMPUTED BY THE - THE ACCOUNTANTS AND THE AUDITORS OF THE FUND.

Q YOU DON'T PARTICIPATE IN THAT PROCESS?

A NO.

Q OKAY.

A ONLY RARELY, AND NOT IN THIS CASE. SOMETIMES THERE ARE INSURANCE CONTRACTS THAT THE [p. 177] AUDITORS MAY NOT UNDERSTAND VERY WELL, SPECIAL SITUATIONS THAT, TO MY KNOWLEDGE, DOES NOT APPLY TO THIS CASE.

Q SUBSEQUENT TO THE CONCRETE PIPE & PRODUCTS WITHDRAWAL, THERE WERE REALLOCATION POOLS CREATED, WERE THERE NOT?

A YES.

Q WHAT DID THOSE REALLOCATION POOLS CONSIST OF?

A REALLOCATED POOLS UNDER THE STATUTE ARE SET UP TO REPRESENT OR REALLOCATE WITHDRAWAL LIABILITIES THAT ARE NOT GOING TO BE COLLECTED. THE MAIN TWO SOURCES OF REALLOCATED POOLS ARE THE DE MINIMIS DEDUCTIBLE, AS APPLIED TO PARTICULAR EMPLOYERS, AND AMOUNTS WRITTEN OFF AS NOT COLLECTIBLE ON ACCOUNT OF BANKRUPTCY OR SOME -SOME - SOMETHING LIKE THAT, OR A SETTLEMENT THAT WAS OBTAINED AT UNFAVORABLE TERMS.

MR. BEERS: I JUST WANT TO POINT OUT THAT AS FAR AS ANY ISSUE INVOLVING CONCRETE PIPE, THE REALLOCATION POOLS ARE IRRELEVANT SINCE THEY CAME INTO EFFECT THE YEAR AFTER THE RELEVANT YEARS FOR CALCULATING CONCRETE PIPE'S WITHDRAWAL LIABILITY. BUT I HAVE NO PROBLEMS WITH THE QUESTIONS OR ANSWERS TO EDUCATE THE ARBITRATOR ON BACKGROUND INFORMATION.

MR. NELSON: AND THE NEXT ONE MAY BE THE ONE THAT TIES IT ALL UP.

[p. 178] Q WE REFERRED TO THESE REALLOCATION POOLS AS REALLOCATION POOLS BECAUSE THE SUMS THAT GO INTO THOSE POOLS ARE TAKEN

FROM THE GENERAL WITHDRAWAL LIABILITY POOLS FOR PRECEDING YEARS?

A THEY'RE NOT SUBTRACTED FROM THOSE POOLS. THEY'RE JUST AMOUNTS THAT WOULD HAVE BEEN ASSESSED TO A WITHDRAWING EMPLOYER OR WITHDRAWING EMPLOYERS, BUT WERE NOT ASSESSED BECAUSE OF PARTICULAR REASONS, USUALLY THE DE MINIMIS OR BANKRUPTCY.

Q SO THE AMOUNT THAT GOES INTO THE WITHDRAWAL LIABILITY POOL FOR THE DE MINIMUS DEDUCTION IN 1982 IS STILL PRESENT IN THE WITHDRAWAL LIABILITY POOL FOR 1979 AND 1980?

A YES. THE QUESTION SEEMS TO IMPLY THAT IT'S A DOUBLE COUNTING. IT ISN'T. IT IS AN ACCOUNTING AGAIN OF SOMETHING THAT WAS COUNTED ONCE AND THEN WAS LOST.

Q WITH RESPECT TO THE ORIGINAL POOLS, THE 1979, 1980 POOLS, THOSE POOLS INCLUDE LIABILITY FOR EMPLOYERS WHO WITHDRAW PRIOR TO THE EFFECTIVE DATE OF THE ACT, CORRECT?

A IT INCLUDES ALL OF THE LIABILITIES OF THE PARTICIPANTS OF THE FUND, MINUS THE ASSETS OF THE FUND, SO THE EXPERIENCE OF ALL OF THE EMPLOYERS AFFECTS THAT.

Q FOR PURPOSES OF DETERMINING THE EXTENT TO [p. 179] WHICH UNFUNDED VESTED LIABILITIES EXCEED ASSETS TO PAY BENEFITS, DO YOU INCLUDE WITHDRAWAL LIABILITY PAYMENTS?

A ONLY THE WITHDRAWAL LIABILITY PAYMENTS THAT HAVE BEEN RECEIVED OR ACCRUED AS CALCULATED BY THE AUDITOR, AND BY ACCRUED IN THAT SENSE, I MEAN, DUE, LET'S SAY, FOR THE MONTH OF DECEMBER AND PAID IN JANUARY.

Q SO THE WITHDRAWAL LIABILITY PAYMENTS RECEIVED BY THE TRUST FUND ARE ADDED BACK INTO THE ASSET BASE FOR PURPOSES OF DETERMINING WHAT THE AGGREGATE UNFUNDED LIABILITY WOULD BE?

A THEY'RE IN THE ASSET BASE. THEY'VE PROBABLY BEEN INVESTED IN SOMETHING.

Q THE ASSET BASE WOULD ALSO INCLUDE AMOUNTS BY WHICH THE PLAN'S INVESTMENT PERFORMANCE EXCEEDED THE ACTUARIAL ASSUMPTION FOR THAT PERFORMANCE?

A YES.

(BRIEF PAUSE.)

MR. NELSON: I HAVE NOTHING FURTHER FOR THIS WITNESS.

THE ARBITRATOR: I JUST LOOKED AT THE CLOCK. YOU'RE GOING TO TAKE HIM NEXT?

MR. BEERS: I'M GOING TO ONLY ASK HIM A COUPLE OF QUESTIONS RELATING TO THE TESTIMONY THAT CAME ON DIRECT.

[p. 180] THE ARBITRATOR: IF IT'S GOING TO BE EXTENDED –

MR. BEERS: VERY SHORT.

CROSS-EXAMINATION

BY MR. BEERS:

Q MR. BATES, TAKE A LOOK AT PAGE 2 OF EXHIBIT 7-C. I JUST WANT TO CLARIFY SOMETHING THAT MIGHT ALREADY BE CLEAR IN EVERYBODY'S MIND, AND IT MIGHT NOT.

MR. NELSON: PAGE 2 OF THE EXHIBIT?

MR. BEERS: PAGE 2 OF THE EXHIBIT 7-C. THE PAGE NUMBER 2, ITS ACTUALLY PAGE 3.

MR. NELSON: ALL RIGHT.

Q BY MR. BEERS: UP AT THE TOP IT'S ENTITLED, ASSUMPTIONS, UNDERLINE WITHDRAWAL LIABILITY. AND THEN ON DIRECT YOU WERE TESTIFYING ABOUT THE VARIOUS ITEMS LISTED THERE, I BELIEVE THERE ARE FIVE OF THEM, AS TO HOW THE FUNDING ASSUMPTIONS DIFFER FROM THE WITHDRAWAL LIABILITY ASSUMPTIONS.

A YES.

Q DO YOU SEE THAT THERE?

A YES.

Q WHEN YOU'RE TALKING ABOUT THE FUNDING ASSUMPTION, YOU'RE TALKING ABOUT ONLY THE SIX PERCENT RATE; IS THAT RIGHT?

A WELL, THE RATE WHICH HAPPENED TO BE SIX [p. 181] PERCENT THIS YEAR FOR THIS FUND.

Q IN OTHER WORDS, THE NET INVESTMENT, CORRECT?

A THE NET INVESTMENT ASSUMPTION.

Q IN OTHER WORDS WHEN YOU'RE TALKING ABOUT THE RATE BEING CONSERVATIVE, FOR EXAMPLE, IN THE THIRD HIGHLIGHTED PARAGRAPH, YOU'RE TALKING JUST ABOUT THAT NET INVESTMENT RATE BEING CONSERVATIVE TO USE FOR WITHDRAWAL LIABILITY PURPOSES?

A YES. WE DRAW THE DISTINCTION BETWEEN WITHDRAWAL LIABILITY PURPOSES AND FUNDING ASSUMPTIONS, FUNDING PURPOSES. WE SAY FOR FUNDING PURPOSES WE'RE MORE CONSERVATIVE, BUT FOR WITHDRAWAL LIABILITY A HIGHER ASSUMPTION IS JUSTIFIED.

Q IN FACT, THOSE FIVE FACTORS ADD UP TO THE REASONS WHY SEGAL HAS A TWO-TIER METHOD; IS THAT RIGHT?

A THAT'S CORRECT.

Q IN FACT, I POINT OUT ON THE BOTTOM OF PAGE 2, THAT THAT SEEMS TO BE WHAT THE REPORT ACTUALLY SAYS, THAT THE INTEREST ASSUMPTIONS ARE DIFFERENT ENOUGH FOR FUNDING THAT YOU HAVE TO HAVE THIS MELDED RATE. AND THEN ON THE NEXT PAGE, IT TALKS ABOUT THE TWO-TIER METHOD. IS THAT YOUR UNDERSTANDING AS TO THE MEANING OF THE DOCUMENT?

A YES.

[p. 182] MR. BEERS: NO FURTHER QUESTIONS.

THE ARBITRATOR: DO YOU WANT TO ASK ANYTHING ABOUT THAT?

MR. NELSON: NO.

THE ARBITRATOR: PERHAPS THIS IS A GOOD TIME TO BREAK. HOW MUCH TIME DO YOU NEED FOR LUNCH?

MR. BEERS: IF WE CAN MAKE IT AS SHORT AS CONVENIENT FOR EVERYONE.

(DISCUSSION HELD OFF THE RECORD.)

THE ARBITRATOR: WE'RE ADJOURNED UNTIL 1:20.

(LUNCH RECESS TAKEN AT 12:20 P.M.)

[p. 183] LOS ANGELES, CALIFORNIA; THURSDAY, FEBRUARY 18, 1988

1:20 P.M.

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THE ARBITRATOR: ON THE RECORD. MR. NELSON, WE'LL RESUME. YOU'RE GOING TO BE CALLING A WITNESS, RIGHT?

MR. NELSON: THAT'S RIGHT.

THE ARBITRATOR: YOU MAY GO AHEAD.

MR. NELSON: I GUESS THIS IS MY CASE IN CHIEF, OR SOMETHING LIKE THAT.

THE ARBITRATOR: YES.

MR. NELSON: OUR NEXT WITNESS WILL BE JON KING.

JON L. KING,

CALLED AS A WITNESS BY THE COMPANY, HAVING BEEN PREVIOUSLY DULY SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR NELSON:

Q FIRST OF ALL, JON, COULD YOU SPELL YOUR NAME FOR THE COURT REPORTER?

A JON, J-O-N, "L" MIDDLE INITIAL, KING, K-I-N-G.

Q WHAT IS YOUR BUSINESS ADDRESS?

[p. 184] A 1801 CENTURY PARK EAST, LOS ANGELES, CALIFORNIA 90067. THAT WAS SUITE 480, IF I DIDN'T GIVE IT TO YOU.

Q WHO IS YOUR PRESENT EMPLOYER?

A BUCK CONSULTANTS.

Q WHAT POSITION DO YOU HOLD WITH BUCK CONSULTANTS?

A I'M A CONSULTING ACTUARY AND MANAGER OF THEIR LOS ANGELES OFFICE.

Q WE'VE PREVIOUSLY MARKED AS EXHIBIT -

THE ARBITRATOR: 13.

Q BY MR. NELSON: - 13, A RESUME. WOULD YOU TAKE A LOOK AT THAT AND TELL ME IF THAT'S YOUR RESUME?

A YES, IT IS.

Q PRIOR TO GOING TO WORK FOR BUCK CONSULTANTS, DID YOU WORK FOR, I BELIEVE IT'S OCCIDENTAL INSURANCE COMPANY?

A AT THAT TIME IT WAS OCCIDENTAL LIFE - MY FIRST JOB, MY FIRST FULL-TIME JOB AFTER GRADUATION FROM COLLEGE WAS WITH OCCIDENTAL LIFE INSURANCE COMPANY OF CALIFORNIA, NOW KNOWN AS TRANSAMERICA LIFE INSURANCE COMPANY.

Q WHAT DID DO YOU FOR OCCIDENTAL LIFE?

A WHEN I FIRST STARTED, I WAS SUPERVISOR OF THE PENSION MATH SECTION. AND AMONG OTHER THINGS, WE [p. 185] WOULD DO SINGLE PREMIUM QUOTATIONS FOR LARGE PENSION PLANS THAT WERE TERMINATING.

I, AT ANOTHER TIME LATER IN MY CAREER WITH OCCIDENTAL, WAS MANAGER OF DIRECT LIFE PRODUCT, AND MY DEPARTMENT WAS RESPONSIBLE FOR DETERMINING THE DESIGN AND PRICING OF THEIR ORDINARY OR RATE BOOK PRODUCTS, THEIR MAINLINE PRODUCTS.

Q WOULD THAT INCLUDE THE PRODUCTS YOU DESCRIBED JUST A MOMENT AGO OF BEING THE ONES -

A NO. THOSE WOULD HAVE BEEN TRULY LIFE INSURANCE PRODUCTS. WHEN I WAS IN THE PENSION SUPERVISION SECTION, IT WAS MORE A - I WAS JUST OUT OF COLLEGE AT THAT TIME AND IT

WAS MORE A, RATHER THAN A DECISION-MAKING RESPONSIBILITY, IT WAS A IMPLEMENTATION ROLE.

Q ARE YOU AN ACTUARY?

A YES.

Q DURING THE COURSE OF YOUR PROFESSIONAL CAREER, HAVE YOU SEEN STUDIES COMPARING P.B.G.C. INTEREST RATES WITH THOSE AVAILABLE FOR SIMILAR COVERAGE IN THE PRIVATE SECTOR?

A YES. WITH A FORMER EMPLOYER WHILE I WAS IN PENSION CONSULTING BUSINESS, WE STUDIED THE – WE STUDIED THAT VERY ISSUE AND WE FOUND THAT IF YOU COMPARED THE P.B.G.C. RATE BASIS TO THE MOST COMPETITIVE, THE MOST COMPETITIVE, SAY FIVE OR SIX [p. 186] COMPANIES AT ANY POINT IN TIME, THAT A GOOD RULE OF THUMB WAS THAT THE COMPETITIVE INTEREST RATES WOULD BE ONE PERCENT HIGHER THAN THE P.B.G.C. RATES, A HUNDRED BASIS POINTS.

Q I SUPPOSE WE OUGHT TO DEFINE WHAT A BASIS POINT IS?

A A BASIS POINT IS ONE-ONEHUNDREDTH OF ONE PERCENT. THERE IS OFTENTIMES CONFUSION BETWEEN WHEN YOU'RE TALKING ABOUT A FULL PERCENTAGE OR A BASIS. I JUST WANT TO MAKE THAT PERFECTLY CLEAR.

Q PRIOR TO YOUR TESTIMONY HERE TODAY, HAVE YOU EXAMINED THE DOCUMENTS WHICH ARE JOINT EXHIBIT 7, WHICH I PROBABLY OUGHT TO HAND TO YOU?

THE ARBITRATOR: DO YOU HAVE ANOTHER ONE?

MR. NELSON: I ONLY HAVE ONE.

MR. BEERS: HE CAN USE MINE. I HAVE ANOTHER SET THAT'S IN MY BINDER HERE.

THE WITNESS: YES, I HAVE IT.

Q BY MR. NELSON: HOW DID YOU COME TO EXAMINE THOSE DOCUMENTS?

A WELL, YOU HAD ASKED ME TO DRAW AN OPINION AS TO WHETHER THE INTEREST RATES – EXCUSE ME, THE ASSUMPTIONS IN THE AGGREGATE USED TO CALCULATE THE WITHDRAWAL LIABILITY IN THIS CASE WERE REASONABLE. AND I ASKED FOR THESE DOCUMENTS AS AN AID IN MAKING THAT DECISION.

[p. 187] Q DID YOU REACH A CONCLUSION AS TO WHETHER THE ACTUARIAL ASSUMPTIONS USED IN COMPUTING THE WITHDRAWAL LIABILITY WERE REASONABLE IN THE AGGREGATE?

A YES, I DID REACH A CONCLUSION, AND THAT CONCLUSION WAS THAT THE ASSUMPTIONS WERE NOT REASONABLE IN THE AGGREGATE. AND PERHAPS I SHOULD SAY THE WAY I REALLY GOT TO THAT WAS BY REVIEWING THE ASSUMPTIONS ON AN ASSUMPTION BY ASSUMPTION BASIS. AND ONLY TWO OF THE ASSUMPTIONS – EXCUSE ME, TWO OF THE ASSUMPTIONS REALLY HIT ME BETWEEN THE EYES AS WHERE THEY WERE EITHER OUT OF LINE OR PERHAPS OUT OF LINE.

THE FIRST ASSUMPTION, AND THE PRIMARY ASSUMPTION, BECAUSE IT WAS VERY, VERY IMPORTANT IN THE CALCULATION, WAS THE NET INVESTMENT INCOME OR NET ASSUMPTION, I THOUGHT THAT WAS VERY LOW. AND THE OTHER ASSUMPTION THAT BOTHERED ME WAS THE ASSUMPTION OF UNRECORDED PAST SERVICE CREDIT. BASED ON MR. BATES' TESTIMONY, I'M STILL NOT SURE THAT IT WAS A REASONABLE ASSUMPTION OR NOT, BUT PERHAPS, YOU KNOW, IT'S MINIMAL AND MAYBE WE COULD GIVE HIM THE BENEFIT OF THE DOUBT. BUT AGAIN, THAT ONE BOTHERED AND PARTICULARLY THE INTEREST RATE ASSUMPTION.

Q WHAT WAS YOUR BASIS FOR CONCLUDING THAT THE INTEREST RATE ASSUMPTION WAS TOO LOW?

[p. 188] A WELL, WHEN I'M LOOKING AT INTEREST RATE ASSUMPTIONS, I PREFER TO LOOK AT ECONOMIC REALITIES OF THE MARKETPLACE RATHER THAN LOOKING AT WHAT ASSUMPTIONS ARE BEING USED FOR THIS AND THAT PURPOSE BY OTHER ACTUARIES. AND ESSENTIALLY THE MARKETPLACE AT THAT TIME HAD INTEREST RATES MUCH HIGHER THAN THAT. AND MY MAIN EVIDENCE THAT I USED IN REACHING THAT CONCLUSION WAS A DOCUMENT THAT MY COMPANY COMPILES EVERY MONTH, AND THEY'VE DONE IT SINCE THE SEVENTIES SOMEWHERE, AND IT'S CALLED THE "BUCK FORWARD INTEREST RATES."

THE "BUCK FORWARD INTEREST RATES" ARE A SET OF INTEREST RATES THAT ARE DERIVED

FROM THE ACTUAL MARKETPLACE FOR RISK-FREE U.S. GOVERNMENT SECURITIES. NOW, ESSENTIALLY, THOSE SECURITIES ARE TREASURY BILLS, NOTES AND BONDS, UNITED STATES GOVERNMENT. ESSENTIALLY THE PROCESS WHERE WE DEVELOP THESE FORWARD INTEREST RATES IS ONCE A MONTH, AT THE BEGINNING OF THE MONTH, WE COMPILE 80 U.S. GOVERNMENT SECURITIES DESIGNED TO COVER THE SPECTRUM OF THE MATURITIES OF THOSE INSTRUMENTS, WHICH GOES OUT TO 30 YEARS. AND THROUGH FINANCIAL AND MATHEMATICAL TECHNIQUES, DETERMINE WHAT THE IMPLICIT MARKET FORECAST IS THAT IS DERIVED FROM THE BIDDING PROCESS FOR THOSE FINANCIAL INSTRUMENTS.

Q CAN YOU GIVE US AN EXAMPLE?

[p. 189] A CERTAINLY, AND THIS IS AN EXAMPLE DESIGNED TO EDUCATE, RATHER THAN AS TO THE METHODOLOGY AS OPPOSED TO TRYING TO BE REALISTIC IN TERMS OF ACTUAL NUMBERS. BUT IF THE YIELD FOR A ONE-YEAR TREASURY SECURITY OF SOME SORT WAS, SAY, TEN PERCENT, AND THE YIELD TO MATURITY FOR A TWO-YEAR SECURITY, U.S. TREASURY SECURITY WAS, SAY, NINE PERCENT PER YEAR, AND IGNORING COMPOUNDING, THAT WOULD EQUAL 18 PERCENT FOR TWO YEARS, ONE COULD CONCLUDE THAT THERE WAS AN EIGHT PERCENT FORECASTED RETURN BY THE MARKETPLACE BY THE PEOPLE WHO BID FOR THOSE SECURITIES, THAT THERE WOULD BE THAT FORECAST FOR THE YEAR, TOO, IN OTHER WORDS, 18 LESS TEN WAS AN EIGHT PERCENT FORECAST.

Q YOU MENTION THAT THESE INTEREST RATES ARE COMPILED AND ENTERTAINED BY YOUR CURRENT EMPLOYER. ARE THEY IN SOME SORT OF TABULATED FORM?

A YES. WE PUBLISH MEMOS, AND I PULLED ONE OUT OF THE FILE AND HAVE IT THERE.

MR. NELSON: I GUESS I'LL MARK THIS NEXT IN ORDER. I THINK IT WOULD BE 15.

THE ARBITRATOR: YES, IT IS. WE'LL MARK BUCK FORWARD INDEX TABLE ONE, COMPOSED OF A NUMBER OF PAGES, AS COMPANY EXHIBIT 15 FOR IDENTIFICATION.

(WHEREUPON, THE AFOREMENTIONED DOCUMENT WAS MARKED AS COMPANY EXHIBIT 15 FOR IDENTIFICATION.)

[p. 190] Q BY MR. NELSON: IS THE DOCUMENT WE'VE MARKED AS COMPANY EXHIBIT 15, IS THE DOCUMENT YOU'RE REFERRING TO AS BEING A TABULATION OF THE BUCK FORWARD INTEREST RATES?

A YES, IT IS. IT JUST SHOWS SAMPLE VALUES FOR DIFFERENT YEARS. IT DOESN'T SHOW ALL YEARS.

Q WHEN YOU SAY IT DOESN'T SHOW VALUES FOR ALL YEARS, I NOTICE IN THE RIGHT-HAND COLUMN THERE ARE ENTRIES FOR 1, 5, 10, 15 AND 20. WHAT YOU MEAN BY THE FACT THAT IT DOESN'T SHOW ALL YEARS, THAT YEARS 2 THROUGH 4 AND 6 THROUGH 9 ARE NOT INCLUDED?

A ARE NOT SHOWN.

Q THEY ARE, HOWEVER, INCLUDED IN THE RATES?

A YES, THEY ARE IN A SET OF RATES THAT'S CALCULATED.

Q I THINK YOU'VE ALREADY TESTIFIED THAT YOU CONCLUDED THAT THE TRUST FUNDS AND INTEREST RATE ASSUMPTION WAS TOO LOW. DID YOU PERFORM ANY KIND OF AN ANALYSIS TO DETERMINE WHAT MEASURES WOULD BE NECESSARY TO MODIFY THE TRUST FUND'S INTEREST RATES ASSUMPTIONS TO MAKE THEM REASONABLE IN THE AGGREGATE?

A YES. WHAT I CHOSE TO DO WAS TAKE THE BUCK FORWARD INTEREST RATES AND ESSENTIALLY APPLY THEM AGAINST THE TOTAL LIABILITIES AND TOTAL PRESENT VALUE OF VESTED BENEFITS OF THE ENTIRE PLAN. AND AS IN THE REASON I CHOSE THOSE IS BECAUSE THEY ARE RISK-FREE, [p. 191] AND I AGREE WITH MR. BATES THAT BASIC ECONOMIC THEORY SAYS IF YOU WERE TO TAKE RISKIER ASSETS, THAT YOU WOULD ONLY ENHANCE YOUR RETURN OVER THE LONG RUN. BY THE WAY, THE LONG RUN WOULD BE MUCH SHORTER OVER THE TIME PERIOD THAT WE'RE DOING THESE CALCULATIONS, THE – WOULD ONLY USE HIGHER INTEREST RATES AND HAS LOWER WITHDRAWAL LIABILITY.

SO WHAT I COULD – TO TYPIFY WHAT I'VE DONE, I HAVE TAKEN THE MINIMUM INTEREST

RATES, WHICH WOULD REALLY PRODUCE THE MAXIMUM EMPLOYER WITHDRAWAL LIABILITIES THAT I WOULD FEEL ARE REASONABLE.

Q I'VE NOTICED THAT THE TABLE, WHICH IS NOW EXHIBIT 15, CONTAINS SOME DATES IN THE EXTREME LEFT-HAND COLUMN. CAN YOU TELL US WHAT THOSE DATES SIGNIFY?

A THOSE ARE THE DATES AS OF WHICH THE SURVEY OF THE SECURITIES WERE TAKEN.

Q SO I UNDERSTAND WHAT'S GOING ON, A DATE OF 12-1-81, AND THE INTEREST RATES THAT OCCUR TO THE RIGHT OF THAT DATE, WOULD BE THE INTEREST RATES THAT WERE AVAILABLE DURING THAT MONTH?

A EXCUSE ME, ON THAT DATE.

Q ON THAT DATE. OKAY.

A IT MAY BE THAT IT'S THE NEAREST BUSINESS DATE TO THAT DATE, OR SOMETHING LIKE THAT, BUT ESSENTIALLY ON THAT DATE.

[p. 192] Q WE STARTED TO GET INTO WHY YOU FELT IT WAS APPROPRIATE TO USE THE U.S. GOVERNMENT FORWARD INTEREST RATES. I'M NOT QUITE SURE WE GOT THERE. WHY DID YOU CHOSE TO USE A FORECAST BASED UPON THOSE INTEREST RATES?

A WELL, BECAUSE THE MARKETPLACE SAYS THAT THESE INTEREST RATES ARE AVAILABLE. THAT'S ESSENTIALLY WHAT THIS IS ALL ABOUT.

ANOTHER WAY OF LOOKING AT THIS IS, THE – IF THE ACTUARY FOR THE TRUST FUND HAD MADE AVAILABLE TO, SAY, AN INVESTMENT MANAGER OR INVESTMENT PROFESSIONAL, THE CASH FLOWS THAT WOULD TAKE PLACE IN THE FUTURE, THE INVESTMENT PROFESSIONAL COULD HAVE GONE OUT AND BOUGHT RISK-FREE SECURITIES, SUCH THAT THE CASH FLOW OF THOSE SECURITIES WOULD MATCH THE CASH FLOWS OF THE PENSION PLAN. AND IF YOU DID THAT, YOU'D COME UP WITH THE SAME TYPE OF – THE SAME RESULT AS I HAVE DONE BY USING THE BUCK FORWARD INTEREST RATES. AND IN EITHER CASE, AND IT'S REALLY THE SAME THING, YOU WOULD HAVE MUCH LOWER EMPLOYER WITHDRAWAL LIABILITY, PRESENT VALUE OF VESTED BENEFITS, THAN WOULD BE OBTAINED THROUGH THE ACTUAL CALCULATION METHOD EMPLOYED BY SEGAL. DID I COVER THE –

Q I THINK SO.

THE QUESTION I GUESS IS: WHY USE U.S. [p. 193] GOVERNMENT SECURITIES AS OPPOSED TO SOMETHING ELSE?

A THEY'RE – THEY'RE RISK-FREE. AND IF I HAD USED A – I COULD HAVE USED INTEREST RATES SAY IMPLICIT IN CORPORATE BONDS, TRIPLE "A" BONDS, AND THEY WERE AT HIGHER YIELDS THAN THE U.S. GOVERNMENT BONDS AND SECURITIES, AND THAT WOULD HAVE GIVEN US A LOWER EMPLOYER WITHDRAWAL LIABILITY. BUT THAT WOULD HAVE BEEN ARGUABLE AS TO HOW MUCH

RISK IS REASONABLE, AND RATHER THAN CHOOSING THAT ARGUMENT, I TRIED TO TAKE AN UNIMPEACHABLE STAND, A TOTALLY DEFENSIBLE STAND, UNASSAILABLE IS THE WORD THAT I'M LOOKING FOR.

Q WITH RESPECT TO TESTIMONY YOU'VE HEARD BEFORE ABOUT THE P.B.G.C. RATES, DID YOU CONSIDER USING THOSE AS A BASIS FOR COMING UP WITH THE INTEREST RATES?

A I DID CONSIDER THEM, BUT I DIDN'T THINK THEY WERE APPROPRIATE. AS I POINTED OUT, THERE ARE CONSERVATIVE STUDIES WHICH HAVE SHOWN THAT THEY ARE CONSERVATIVE, AND MOREOVER, I MEAN, THEY DO THE SURVEY THAT MR. BATES INDICATED. BUT IN MY EXPERIENCE AT OCCIDENTAL, I WAS - I REMEMBER ONE TIME MY BOSS CAME UP TO ME AND TOLD ME TO QUOTE ON THIS ONE LARGE PENSION TERMINATION, AND HE TOLD ME WHAT INTEREST RATE ASSUMPTION TO USE. AND I SAID, "WELL, YOU KNOW, WE'RE NOT GOING TO BE COMPETITIVE [p. 194] WITH THAT. IT'S A WASTE OF MY TIME TO DO THE CALCULATION."

HE SAID, "I KNOW THAT, JON. I DON'T WANT TO WASTE YOUR TIME, BUT WE JUST WANT TO GIVE THE AGENTS A QUOTE TO KEEP THEM HAPPY. THE LAST THING I WANT IS HIS BUSINESS."

THIS IS TRANSAMERICA OCCIDENTAL. AT THAT TIME, I THINK IT WAS THE TENTH LARGER INSURER IN THE COUNTRY. I'D BE VERY SURPRISED IF THEY WEREN'T IN THE P.B.G.C. RATES. THIS IS THE BOTTOM LINE THAT THIS IS THE KIND OF SURVEY

INFORMATION THAT THE P.B.G.C. OBTAINS. SO I REALLY DON'T PUT MUCH STOCK IN IT.

Q DID YOU HAVE OCCASION TO COMPUTE OR RECOMPUTE THE WITHDRAWAL LIABILITY USING THE BUCK FORWARD INTEREST RATES?

A YES, I DID.

Q HAVE YOU PREPARED ANY EXHIBITS THAT WOULD SHOW THOSE RESULTS?

A YES, AND I HAVE THEM HERE.

Q WHY DON'T WE START MARKING AND IDENTIFYING THESE. I THINK THEY COME IN PACKAGES.

THE ARBITRATOR: WHY DON'T WE MARK IT FOR IDENTIFICATION AS COMPANY EXHIBIT 16 FOR IDENTIFICATION.

MR. NELSON: IT PROBABLY OUGHT TO BE 16-A [p. 195] THROUGH -D.

THE ARBITRATOR: ALL RIGHT. 16-A, -B, -C. -D. -A THROUGH -D.

(WHEREUPON, THE AFOREMENTIONED DOCUMENT WAS MARKED AS COMPANY EXHIBIT 16-A THROUGH 16-D FOR IDENTIFICATION.)

Q BY MR. NELSON: 16-A WOULD BE A DOCUMENT THAT AT THE TOP OF IT SAYS INTEREST BASIS BUCK FORWARD INTEREST RATES CONTRIBUTION BASIS INCLUDES CEN-VI-RO CONTRIBUTIONS?

A YES.

Q AND 16-B WOULD BE INTEREST BASIS, BUCK FORWARD INTEREST RATES, CONTRIBUTION BASIS EXCLUDES CEN-VI-RO CONTRIBUTIONS.

16- C. WOULD BE INTEREST BASIS P.B.G.C. RATES CONTRIBUTION BASIS INCLUDES CEN-VI-RO CONTRIBUTIONS.

16-D WOULD BE P.B.G.C. RATES AS AN INTEREST BASIS CONTRIBUTION BASIS EXCLUDES CEN-VI-RO CONTRIBUTIONS.

FIRST OF ALL, WHAT DOES 16-A THROUGH -D REPRESENT?

A WELL, THESE WOULD BE THE ACTUAL WORKSHEETS FOR CALCULATING THE WITHDRAWAL LIABILITY FOR CONCRETE PIPE & PRODUCTS BASED ON THE CALCULATIONS OF THE PRESENT VALUE OF VESTED BENEFITS THAT WE DID ON USING THE BUCK FORWARD INTEREST RATES.

[p. 196] Q WHERE WOULD APPLICATION OF THE BUCK FORWARD INTEREST RATES APPEAR IN TERMS OF THE SEVEN ITEMS ON EACH OF EXHIBITS 16-A THROUGH -D?

A IT WOULD HAVE AFFECTED ITEM –

Q LET ME REPHRASE THAT, BECAUSE THE BUCK FORWARD INTEREST RATES ARE ONLY ON 16-A AND -B.

A THANK YOU. IT WOULD AFFECT ITEMS FOUR AND ANY ITEM BELOW THAT. IT DIRECTLY

AFFECTED FOUR, AND THE OTHERS FOLLOW NATURALLY, IF YOU JUST FOLLOW THE CALCULATION WORKSHEETS.

Q I GUESS FOR EVERYBODY'S BENEFIT, AS LONG AS WE'RE PROCEEDING INFORMALLY, THE ENTRIES ARE TAKEN FROM THE WORKSHEET AND SHOULD BE IN ROUGHLY THE SAME ORDER AS, I GUESS, EXHIBIT 7-A.

MR. BEERS: 7-A. AT A GLANCE, IT LOOKS LIKE IT'S THE SAME FORMAT –

THE WITNESS: WE TRIED TO FOLLOW THE FORMAT AS CLOSELY AS POSSIBLE, AND MY APOLOGIES FOR INTERRUPTING COUNSEL.

Q BY MR. NELSON: I NOTICE ON 16-A, THE SECOND LINE OF ENTRY NUMBER FOUR IS IN PARENTHESES? WHAT DOES THAT SIGNIFY?

A THAT WAS A NEGATIVE POOL AT THAT POINT IN TIME.

Q WHEN YOU SAY A NEGATIVE POOL, WHAT DOES THAT MEAN?

[p. 197] A WELL, THE TOTAL UNFUNDED VESTED LIABILITY AS OF THAT POINT IN TIME WAS ACTUALLY LESS THAN ON THE POOL THAT WAS ALREADY, THE RESIDUAL POOL THAT WAS BEGAN DECEMBER 31ST, 1979. AND OF COURSE THAT POOL WAS DECREASED BY FIVE PERCENT, AND THAT GAVE US THE 288 MILLION 786 THOUSAND 182 FIGURE. AND ESSENTIALLY 4-B IS A BALANCING ITEM TO GET YOU TO THE UNFUNDED VESTED LIABILITY.

AND JUST BECAUSE THE INTEREST RATES HAD RISEN, THE POOL HAD – THE P.B.G.C. INTEREST RATES UNDERLYING – EXCUSE ME, INTEREST RATES IN THE MARKETPLACE HAD RISEN OVER THAT PERIOD, AND THAT CAUSED THE UNFUNDED VESTED BENEFIT TO DROP. AND THAT ESSENTIALLY RESULTED IN A NEGATIVE POOL.

Q WHERE DID THE ENTRIES THAT FOLLOW ENTRY NUMBER TWO ON EXHIBIT 16-A COME FROM?

A THEY WERE TAKEN FROM EXHIBIT 7, I BELIEVE IT IS.

Q 7-A? THE ORIGINAL WORKSHEET?

A 7-A, HANG ON. YES.

Q WITH RESPECT TO EXHIBIT 16-A, WHERE WOULD THE NUMBERS USED IN ITEM NUMBER 3 HAVE COME FROM?

A IT'S A SIMPLE ARITHMETIC OPERATION AS DESCRIBED.

Q WHAT IS THE DIFFERENCE BETWEEN EXHIBIT 16-A AND 16-B?

[p. 198] A THAT 16-A INCLUDES THE CEN-VI-RO CONTRIBUTIONS, AND 16-B EXCLUDES THEM. OTHER THAN THAT, THE ONLY DIFFERENCE IS WHAT RESULTS FROM FOLLOWING THE FORM AND DOING THE CALCULATIONS ACCORDING TO THE FORM. IT'S ONLY INPUT DIFFERENCE.

Q THE RESULT ON LINE 17 OF 16-A AND 16-B IS DIFFERENT. WHAT ACCOUNTS FOR THE DIFFERENCE?

A IN ESSENTIALLY THE CONCRETE PIPE & PRODUCTS' SHARE OF THE EMPLOYER WITHDRAWAL LIABILITY IS LESS IN 16-B BECAUSE THEIR CONTRIBUTIONS WERE CALCULATED EXCLUDING THE CEN-VI-RO CONTRIBUTIONS.

SO, IN OTHER WORDS, JUST 1-A AND 1-B ARE ESSENTIALLY ON 16-B ARE LESS THAN 1-A AND 1-B ON 16-A, AND THE REST FOLLOWS ARITHMETICALLY.

Q WITH RESPECT TO 16-C, CAN YOU TELL US WHAT EXHIBIT 16-C DEPICTS?

A WELL, THE CALCULATION BASIS HERE, INSTEAD OF BEING EITHER THE BUCK FORWARD INTEREST RATES THAT WERE USED IN 16-A AND 16-B, OR THE BLENDED RATES THAT SEGAL USED, WHICH WERE PART P.B.G.C. RATES AND PART THE SIX PERCENT FUNDING ASSUMPTION, WE'VE NOW USED PURELY THE P.B.G.C. RATES IN CALCULATING THE PRESENT VALUE OF – OR THE UNFUNDED VESTED LIABILITY IN LINE FOUR.

Q IS THE DIFFERENCE BETWEEN 16-C AND 16-D THE INCLUSION OF THE CEN-VI-RO CONTRIBUTIONS?

[p. 199] A YES. THE SAME DIFFERENCE AS BETWEEN "A" AND "B," 16-A AND 16-B.

I MIGHT ADD I'M NOT TRYING TO RECOMMEND THE P.B.G.C. RATES, BUT IT WAS JUST A VERY EASY

CALCULATION BASED ON THE WORK THAT SEGAL HAD ALREADY DONE.

Q WOULD USE OF THE P.B.G.C. RATE IN THE WITHDRAWAL LIABILITY ASSUMPTIONS USED MAKE THE TRUST FUNDS ASSUMPTIONS IN THIS CASE REASONABLE IN THE AGGREGATE?

A NO, I DON'T THINK SO. AS I SAY, I THINK THE BUCK FORWARD INTEREST RATES ARE THE MINIMUM REASONABLE ASSUMPTIONS, INTEREST ASSUMPTION.

Q ARE YOU FAMILIAR WITH SOMETHING CALLED A "WYATT REPORT"?

A YES, I AM.

Q DO YOU HAVE ONE ON YOU?

A I DO HAVE – YOU MAY FIND IT IN MY GREEN FOLDER THERE, OR PERHAPS MY BRIEFCASE, IF I MAY BE EXCUSED?

THE ARBITRATOR: GO AHEAD. OFF THE RECORD.

(BRIEF PAUSE.)

THE ARBITRATOR: OKAY.

Q BY MR. NELSON: I GUESS WE'LL HAND YOU WHAT IS EXHIBIT 4, FUND EXHIBIT 4, WHICH HAS BEEN REPRESENTED AS BEING THE WYATT REPORT FOR 1982 SURVEY [p. 200] OF ACTUARIAL ASSUMPTIONS AND FUNDING. ARE YOU FAMILIAR WITH THE WYATT COMPANY REPORTS?

A YES. I BELIEVE I'VE EVEN SEEN THIS PARTICULAR REPORT BEFORE.

Q ARE ASSUMPTIONS CONTAINED IN FUND EXHIBIT 4 AN APPROPRIATE MEASURE OF THE CORRECT INTEREST RATE TO USE IN CALCULATING WITHDRAWAL LIABILITY?

A I MISSED SOMETHING. AT THE START OF YOUR QUESTION YOU SAID FUND EXHIBIT 4, OR SOMETHING LIKE THAT?

Q I'M SORRY. WHY DON'T I REPHRASE THE WHOLE QUESTION. I'M MUMBLING TO MYSELF.

ARE THE ACTUARIAL ASSUMPTIONS CONTAINED IN TRUST FUND EXHIBIT 4, WHICH IS THE WYATT REPORT, AN APPROPRIATE MEASURE OF THE CORRECT INTEREST RATE TO USE IN CALCULATING WITHDRAWAL LIABILITY?

A NO, NOT AT ALL. THE PURPOSE OF THE SURVEY WAS TO PROVIDE A SURVEY OF ACTUARIAL ASSUMPTIONS FOR THE ONGOING PENSION EVALUATION, WHICH IS A DIFFERENT PROCESS THAN THE WITHDRAWAL LIABILITY CALCULATION. MOREOVER, I DON'T THINK THE – THE ASSUMPTIONS USED FOR FUNDING ARE APPROPRIATE, A PRIORITY FOR WITHDRAWAL LIABILITY CALCULATIONS.

MR. NELSON: I GUESS I'D LIKE TO MOVE TO THE EXTENT NECESSARY MOVE FOR THE INTRODUCTION OF EXHIBITS 15 AND 16-A THROUGH -D.

[p. 201] THE ARBITRATOR: ANY OBJECTION?

MR. BEERS: NO OBJECTION.

THE ARBITRATOR: 15 AND 16 ARE RECEIVED.

(WHEREUPON, COMPANY EXHIBITS 15 AND 16-A THROUGH 16-D WERE RECEIVED IN EVIDENCE.)

(BRIEF PAUSE.)

Q BY MR. NELSON: WITH RESPECT TO THE PAST SERVICE CREDITS FOR UNRECORDED PRIOR SERVICE, WHAT WOULD BE THE IMPACT OF ELIMINATING THOSE CREDITS FROM THE AGGREGATE UNFUNDED VESTED LIABILITY POOLS?

A THAT WOULD DECREASE THE WITHDRAWAL LIABILITY.

MR. NELSON: I HAVE NOTHING FURTHER.

MR. BEERS: THAT'S ALL YOUR QUESTIONS?

MR. NELSON: YES.

MR. BEERS: IF WE COULD JUST HAVE FIVE MINUTES.

THE ARBITRATOR: SURE.

(SHORT RECESS.)

THE ARBITRATOR: BACK ON THE RECORD. MR. BEERS.

CROSS-EXAMINATION

BY MR. BEERS:

Q ONE OF THE THINGS I NOTICED IN YOUR DIRECT TESTIMONY IS THERE WAS NO MENTION OF THE CONCEPT THE SEGAL COMPANY USES IN DETERMINING HOW TO VALUE THE FUND. THAT IS, THEY HAVE ONE RATE THAT THEY USE FOR [p. 202] ASSETS THAT THEY HAVE ON HAND, THAT THEY CAN GO OUT AND USE SOME KIND OF MARKET INSTRUMENT TO GET A VALUE. AND THEY HAVE A DIFFERENT RATE FOR FUNDS THAT AREN'T HERE TODAY, WHICH, AS A MATTER OF COURSE, YOU CAN'T JUST GO OUT AND BUY THE BOND. YOU DON'T KNOW WHAT THE INTEREST RATE IS GOING TO BE TOMORROW OR THE NEXT DAY.

HOW DO YOU ACCOUNT FOR THAT IN YOUR CALCULATIONS OF WITHDRAWAL LIABILITY AND THE REASONABLE RATES TO USE TO DETERMINE UNFUNDED VESTED LIABILITY WHEN YOU CAN'T USE THESE RATES WHEN YOU DON'T HAVE ENOUGH ASSETS TO FUND THE PLANNING?

MR. NELSON: I'M NOT SURE IF I SHOULD OBJECT TO THAT AS BEING COMPOUND.

MR. BEERS: THE LAST PHRASE.

THE ARBITRATOR: LET'S ASK THE WITNESS.

DO YOU UNDERSTAND WHAT THE QUESTION WAS?

THE WITNESS: YES.

THE ARBITRATOR: OKAY.

THE WITNESS: I FIND IT TO BE NO PROBLEM AT ALL. THE BASIC PRINCIPLE OF ANY KIND OF PRESENT VALUE CALCULATION IN ACTUARIAL SCIENCE, WHETHER IT BE ONGOING VALUATIONS OR WITHDRAWAL CALCULATIONS, IS TO DETERMINE THE AMOUNT OF MONEY THAT YOU NEED TO DO SOMETHING TODAY. SO THAT'S WHAT IT'S ALL ABOUT. AND THE POINT IS, IF ANY WITHDRAWING EMPLOYER PAID THAT [p. 203] MONEY AT THAT POINT IN TIME, THAT COULD BE USED TO PURCHASE THOSE BONDS.

Q BY MR. BEERS: BUT IN VALUING THE PLAN, THE UNFUNDED VESTED LIABILITY OF THE PLAN, IF MONEY IS NOT ON HAND TO BUY AN INVESTMENT, ARE YOU SAYING IT'S REALISTIC TO USE A MARKET RATE IN EXISTENCE, THEN TO DETERMINE THE INVESTMENT RETURN YOU COULD GET FIVE YEARS OR TEN YEARS HENCE WHEN THE MONEY IS IN HAND; IS THAT CORRECT?

A YES.

Q AND YOU THINK THAT'S REASONABLE?

A WELL, YES, IT'S REASONABLE, BECAUSE THE WHOLE PURPOSE, AS I EXPLAINED, IS TO DETERMINE HOW MUCH YOU'RE SUPPOSED TO HAVE TODAY. IF YOU DID HAVE IT TODAY, YOU COULD INVEST IT TODAY. THE FACT THAT SOMEBODY DOESN'T HAVE IT TODAY IS ADJUSTED BY INTEREST PAYMENTS OVER THE INTERVENING YEARS THEN.

IF IT'S NOT PAID, THEN, I MEAN, IT SEEMS FAIR THAT ONCE A WITHDRAWAL LIABILITY IS DUE,

THERE WOULD BE AN ADJUSTMENT FOR INTEREST OVER ANY PERIOD THAT IT'S NOT PAYABLE. BUT ALL ACTUARIAL PRESENT VALUES ARE BASED ON THE PREMISE OF DETERMINING WHAT'S DUE TODAY. AND IN A TYPICAL ONGOING VALUATION, FOR INSTANCE, I HAVE NEVER HEARD ANY ACTUARY, AND THEY'RE ALWAYS DOING PRESENT VALUES, DIFFERENTIATE BETWEEN MONEY THEY HAVE AND MONEY THEY DON'T HAVE.

[p. 204] Q WHEN YOU SAY YOU HAVEN'T HEARD ANY OTHER ACTUARY DO THAT –

A FOR AN ONGOING VALUATION.

Q – ARE YOU TALKING ABOUT THE SEGAL COMPANY? WHAT ABOUT THEM?

A FOR AN ONGOING – I WOULD BE SURPRISED IF THEY DIFFERENTIATED BETWEEN MONEY THEY HAD AND MONEY THEY DIDN'T HAVE FOR ONGOING VALUATION AND USING DIFFERENT RATES.

Q FOR WITHDRAWAL LIABILITY PURPOSES, IN DETERMINING HOW REASONABLE RATES ARE AND DETERMINING WITHDRAWAL LIABILITY, DO YOU CONSIDER WHAT OTHER ACTUARIES HAVE USED IN COMING UP WITH WHAT YOU CONSIDER TO BE A REASONABLE AMOUNT?

A WELL, I MEAN, I LOOK AT IT AND I UNDERSTAND THERE'S A LOT OF COMFORT IN BEING IN A HERD, BUT IF THE HERD ISN'T LOOKING AT ECONOMIC REALITY, I WILL NOT JOIN THE HERD.

Q WHAT DO YOU UNDERSTAND REASONABLE TO MEAN?

A REASONABLE WOULD MEAN THAT WHICH YOU COULD - YOUR BEST ESTIMATE OF WHAT THE FUND COULD REALLY EXPECT TO EARN.

Q IN THE MOST EXTREME HYPOTHETICAL, YOU SAID THE BEST YOU CAN EXPECT THE FUND TO EARN; IS THAT CORRECT?

A NO. YOUR BEST ESTIMATE OF WHAT THE FUND [p. 205] COULD EARN. MY ESTIMATE OF THE BEST THE FUND COULD EARN WOULD BE SO HIGH AS TO TOTALLY WIPE OUT THESE WITHDRAWAL LIABILITIES WITHOUT QUESTION.

Q THAT'S ONE NUMBER YOUR BEST ESTIMATE?

A NO. THERE'S CERTAINLY A RANGE, AS I POINTED OUT. I'VE GIVEN MY MINIMUM INTEREST ASSUMPTION. I WOULD CERTAINLY BE MORE COMFORTABLE WITH SOME HIGHER INTEREST ASSUMPTIONS, BASED ON THE FACT THAT THE FUND COULD, YOU KNOW, INVEST IN TRIPLE "A" CORPORATE BONDS THAT EARN MORE THAN U.S. SECURITIES OR INVEST IN EQUITIES WHICH HISTORICALLY HAVE EARNED SIX OR SEVEN PERCENT MORE THAN GOVERNMENT SECURITIES, ACCORDING TO THE IBBOTSON AND SINQUEFELD, I-B-B-O-T-S-O-N AND S-I-N-Q-U-E-F-E-L-D, STUDIES OUT OF THE UNIVERSITY OF CHICAGO. THEY'RE CONSIDERED BY ANY PENSION EXPERT I KNOW, EITHER ON THE LIABILITY SIDE, IN OTHER WORDS, ACTUARIES OR INVESTMENT MANAGERS, TO BE THE BIBLE.

Q YOU'RE GOING TO HAVE TO HELP ME, BECAUSE I DON'T UNDERSTAND YOUR IDEA OF

REASONABLENESS. YOU'RE SAYING THAT YOUR BEST ESTIMATE IS WHAT IS REASONABLE, EVEN IF IT'S THE ONLY ESTIMATE AT THAT AMOUNT; IS THAT CORRECT?

A I DON'T UNDERSTAND YOUR QUESTION.

MR. NELSON: COULD I TAKE A SHOT?

MR. BEERS: SURE, GO AHEAD.

MR. NELSON: I THINK WHAT YOU'RE - MAYBE I'M NOT [p. 206] UNDERSTANDING THE QUESTION, BUT I THINK WHAT YOU'RE GETTING AT HERE IS THE QUESTION OF WHETHER YOU DEFINE REASONABLE AS BEING WHAT OTHER ACTUARIES ARE DOING OR WHAT HE PERCEIVES TO BE AVAILABLE IN THE MARKETPLACE, IRRESPECTIVE OF WHETHER OTHER ACTUARIES ARE DOING IT.

MR. BEERS: THAT'S PART OF IT. LET ME RESTATE THE QUESTION.

Q IS ONE OF THE FACTORS YOU CONSIDER IN DETERMINING WHAT A REASONABLE RATE IS IS WHAT OTHER ACTUARIES ARE HOLDING TO BE REASONABLE RATES?

A NOT REALLY.

Q SO IF YOU WERE THE ONLY ONE TO HOLD THAT A PARTICULAR RATE WAS REASONABLE, YOU WOULD STILL FEEL THAT FITS IN THE DEFINITION OF WHAT REASONABLE IS?

A YES. I WOULD BE VERY - I WOULD TAKE EXTREME CARE IN THAT SITUATION, BECAUSE I DID

NOT HAVE THE COMFORT OF THE HERD THAT I WAS RIGHT AND HAD A DEFENSIBLE POSITION. I WOULD REALLY DO A LOT OF DEEP SOUL-SEARCHING AS I HAVE. BUT THAT DOESN'T MEAN - YOU HAVE TO UNDERSTAND -

Q I THINK THAT BLENDS INTO ANOTHER QUESTION THAT I HAVE.

MR. NELSON: LET HIM FINISH THE ANSWER.

THE ARBITRATOR: LET HIM FINISH THE ANSWER.

THE WITNESS: YOU HAVE TO UNDERSTAND IN THIS KIND [p. 207] OF CALCULATION THE ACTUARY IS REPRESENTING THE TRUST FUND, WHICH IS TRULY COMPOSED OF LABOR AND MANAGEMENT. LABOR AND MANAGEMENT BOTH BENEFIT FROM CONSERVATISM. YOU HAVE MARKET PRESSURES THAT ESSENTIALLY DEAL ACROSS THE HERD OF PROFESSIONALS THAT WOULD CAUSE THINGS TO BE LOW.

THE WITHDRAWING - THE WITHDRAWING EMPLOYER WOULD BE THE ONLY ONE WHO WOULD BE HARMED BY BEING CONSERVATIVE, AND THEY REALLY HAVE NO REPRESENTATION. SO I THINK THERE'S A BUILT-IN BIAS, IF ACTUARIES ARE HUMAN, TO BE LOW, AND I THINK THAT'S WHY THE HERD IS LOW.

Q BY MR. BEERS: WELL, LET ME TAKE ANOTHER APPROACH TO IT. YOU WERE SAYING

THAT THE P.B.G.C. RATES WERE NOT REASONABLE; IS THAT CORRECT?

A YEAH, I THINK THEY ARE NOT REASONABLE, THAT IS CORRECT.

Q YOU WERE SAYING THAT'S BECAUSE, AS YOU PHRASED IT, THE COMPETITIVE RATES ARE A POINT HIGHER; IS THAT CORRECT?

A YEAH.

Q WHAT DO YOU REALLY MEAN BY COMPETITIVE RATES? YOU MEAN THE HIGHEST RATES?

A WELL, IF YOU DID ANY KIND OF SURVEY, I MEAN, PROFESSIONALS IN THE INVESTMENT AND ACTUARIAL AREAS GENERALLY KNOW WHO THE PROFESSIONALS WERE. AND IF [p. 208] YOU CHOSE TEN COMPANIES THAT ARE KNOWN TO BE ACTIVE IN THE MARKETPLACE, YOU WOULD GET ESSENTIALLY A SURVEY THAT WOULD MORE APPROPRIATE TO BE USED BY THE P.B.G.C. AGAIN, THE P.B.G.C. HAS GOT EVERY ADVANTAGE IN BEING CONSERVATIVE. SO THEY DESIGN THEIR SURVEY TO BE CONSERVATIVE.

Q SO WHEN YOU SAY THE FIVE MOST COMPETITIVE RATES, YOU MEAN THE FIVE HIGHEST?

A THE FIVE LOWEST BIDS ON A DOLLAR BASIS, AND THAT WOULD EQUATE TO THE FIVE HIGHEST INTEREST ASSUMPTIONS.

Q YOU DON'T CONSIDER THAT THE AVERAGE RATES USED BY THE P.B.G.C. WOULD BE REASONABLE?

A NO, I THINK I EXPLAINED WHY. SHOULD I GO OVER THAT AGAIN?

Q NO, THAT'S FINE.

MR. NELSON: LET ME - WHEN YOU SAY REASONABLE, YOU'RE TALKING ABOUT REASONABLE AS AN INTEREST ASSUMPTION, NOT REASONABLE IN THE COSMIC SENSE OF WHAT THE GOVERNMENT AGENCY DOES IS -

MR. BEERS: NO. REASONABLE BEING USED IN WITHDRAWING LIABILITY.

THE WITNESS: YES, THAT'S EXACTLY THE WAY I MEANT IT, AND YOU'RE RIGHT, IF I WAS IN THE P.B.G.C., I WOULD BE WORKING FOR LOW INTEREST RATES TOO.

Q BY MR. BEERS: ONE OF THE THINGS THAT ALSO [p. 209] BOTHERED ME WAS, AS FAR AS THE WYATT STUDY GOES - NOW, OF COURSE IT'S TRUE THAT THAT'S NOT A STUDY OF RATES USED IN WITHDRAWAL LIABILITY FUNDING, WITHDRAWAL LIABILITY DETERMINATIONS. WHAT THAT IS IS A STUDY OF RATES USED AS FUNDING ASSUMPTIONS; IS THAT CORRECT?

A YES.

Q AS FAR AS THAT BEING A STUDY OF RATES FOR FUNDING ASSUMPTIONS, DO YOU CONSIDER THE CONCLUSIONS REACHED IN THERE - DO YOU CONSIDER THE RATES REFLECTED IN THERE TO BE REASONABLE RATES FOR FUNDING ASSUMPTIONS?

A THEY'D BE WITHIN - SOME OF THEM CERTAINLY ARE. SOME OF THEM I WOULD PROBABLY - I MEAN, IT'S A SURVEY OF THOUSANDS, I PRESUME THOUSANDS OF PLAN ASSUMPTIONS. I WOULD ASSUME MOST OF THEM ARE REASONABLE FOR FUNDING PURPOSES.

Q TURNING TO, UNFORTUNATELY THE PAGES AREN'T NUMBERED, BUT TURNING THROUGH IT TO A PAGE THAT STARTS UP IN THE TOP LEFT-HAND CORNER WHERE IT SAYS "CHANGES IN INTEREST RATE."

A YES.

MR. NELSON: HOLD ON. I HAVEN'T FOUND IT YET.

MR. BEERS: THE NEXT TITLE IS AVERAGE INTEREST RATES.

Q LOOKING AT THE TABLE THERE, YOU HAVE AN [p. 210] ENTRY FOR 10,000 OR MORE ACTIVE PLAN PARTICIPANTS.

A YES.

Q AND A COLUMN TO THE RIGHT SIDE FOR NONPAY-RELATED PLANS. FOR THE 1981 SURVEY IT HAS 6.1 PERCENT.

MR. NELSON: OKAY.

Q BY MR. BEERS: IS THAT A REASONABLE FUNDING ASSUMPTION?

MR. NELSON: I OBJECT AS BEING AMBIGUOUS. IN RELATION TO WHAT?

MR. BEERS: IN RELATION TO DETERMINING THE ACTUARIAL EVALUATION OF A PLAN BACK IN 1981 IN DEVELOPING THEIR INVESTMENT STRATEGIES AND PREDICTING FUTURE EARNING CAPABILITY.

MR. NELSON: I DON'T WANT TO GET UNDUE - AND I HAVEN'T HAD THE BENEFIT OF ANALYZING THIS REPORT IN ANY DETAIL, BUT IT LOOKS TO ME LIKE WHAT WE'RE TALKING ABOUT HERE IS A SURVEY OF AN UNKNOWN NUMBER OF PLANS OF UNKNOWN CHARACTERISTICS.

MR. BEERS: IT'S 813 PLANS.

MR. NELSON: 813 PLANS OF UNKNOWN CHARACTERISTICS.

MR. BEERS: EXCEPT THEY ARE KNOWN CHARACTERISTICS. YOU HAVE PLANS RELATED TO PAY, PLANS THAT ARE NONPAY-RELATED, IT'S BROKEN FAIRLY SPECIFICALLY. IS THERE A PROBLEM WITH HIM ANSWERING [p. 211] THE QUESTION?

THE ARBITRATOR: LET'S FIND OUT WHETHER THE WITNESS IS FAMILIAR WITH THIS.

MR. NELSON: MAYBE I'M BEING OVERLY TECHNICAL HERE, BECAUSE I HAVEN'T READ IT YET.

THE ARBITRATOR: IF THE WITNESS IS FAMILIAR WITH IT, THEN IT REALLY DOESN'T MATTER WHETHER COUNSEL IS.

MR. NELSON: THAT'S TRUE. COULD I HEAR THE QUESTION ONE MORE TIME?

Q BY. MR. BEERS: IS THE 6.1 PERCENT ENTRY THERE ON THE LINE FOR 10,000 OR MORE PLAN PARTICIPANTS THAN THE NONPAY-RELATED PLANS? IS THAT A REASONABLE FUNDING ASSUMPTION?

A ASUMING ALL OTHER ASSUMPTIONS WERE REASONABLE FOR THE PLAN, I WOULD SAY THAT WAS AT AN EXTREME LOW END OF WHAT I WOULD CONSIDER REASONABLE.

Q LOOKING AT THAT, ISN'T THAT THE AVERAGE FUNDING ASSUMPTION USED BY THOSE PLANS DURING THAT YEAR?

A YES.

Q I NOTICE FROM YOUR RESUME THAT YOUR BACKGROUND IS CHIEFLY IN WORKING WITH GOVERNMENT SPONSORED RETIREMENT PLANS; IS THAT CORRECT?

A I'D SAY I SPEND ABOUT HALF MY TIME IN THE GOVERNMENT SECTOR, AND THE OTHER HALF IN THE PRIVATE [p. 212] SECTOR.

Q YOUR TIME IN THE PRIVATE SECTOR HAS BEEN SPENT RECENTLY OR SOMETHING, THAT'S WHY IT'S NOT ON YOUR RESUME?

A IT'S ON THE RESUME. THERE WAS ONE FORTUNE 100 COMPANY, WHERE I SPEND AN AWFUL LOT OF TIME.

Q WITH A SINGLE EMPLOYER PLAN?

A YES. THEY HAD MANY, MANY PLANS.

Q BUT CHIEFLY SINGLE EMPLOYER PLANS?

A YES.

Q IS THERE ANY WITHDRAWAL LIABILITY FOR GOVERNMENT PENSION PLANS?

A NO, THE CONCEPT IS NOT APPROPRIATE.

Q IS THERE ANY WITHDRAWAL LIABILITY FOR SINGLE EMPLOYER PLANS?

A NO. I MEAN, THERE'S A SIMILAR CONCEPT THAT WOULD APPLY THE SAME ACTUARIAL AND ECONOMIC TECHNIQUE, BUT THERE IS NO CALCULATION OF A, YOU KNOW, EMPLOYER WITHDRAWAL LIABILITY.

Q THAT TECHNIQUE WOULD INVOLVE THESE P.B.G.C. RATES TO DETERMINE WHETHER SINGLE EMPLOYER PLAN TERMINATION WAS APPROPRIATE?

A YES.

MR. BEERS: NO FURTHER QUESTIONS.

MR. NELSON: NOTHING FURTHER.

THE ARBITRATOR: I HAVE A QUESTION.

[p. 213] THESE FELLOWS ARE ALL EXPERTS IN THE FIELD, BUT THERE ARE A COUPLE OF THINGS YOU'LL HAVE TO EXPLAIN TO ME, BECAUSE I'M NOT QUITE SURE I UNDERSTAND. FOR THE PURPOSE OF MY UNDERSTANDING, AND HOW YOU'RE USING THE WORD "REASONABLE" IS IMPORTANT,

BECAUSE I THINK WHEN YOU LOOK AT THE STATUTE IN SECTIONS 4221 AND 4213, IT MAKES REFERENCE TO REASONABLENESS. ARE YOU USING THE TERM REASONABLE IN THE SENSE THAT THE STATUTE TALKS ABOUT, OR ARE YOU USING IT IN ANOTHER CONTEXT?

THE WITNESS: I'M TRYING TO ABIDE BY THE STATUTE.

THE ARBITRATOR: I JUST WANTED TO MAKE SURE THAT WE UNDERSTOOD THAT.

MR. BEERS: IS IT OKAY IF I ASK ANOTHER QUESTION?

THE ARBITRATOR: I HAVE ONE MORE QUESTION, AND THEN YOU CAN GO AHEAD.

MR. BEERS: GO AHEAD.

THE ARBITRATOR: I'M LOOKING AT YOUR COMPANY EXHIBIT 15, WHICH IS CALLED THE BUCK FORWARD INTEREST RATE INDEX.

THE WITNESS: UH-HUH.

THE ARBITRATOR: AGAIN, YOU'LL HAVE TO FORGIVE, BECAUSE I'M NOT VERY GOOD AT FIGURES, SO I DON'T ALWAYS UNDERSTAND WHAT I READ.

[p. 214] I WAS LOOKING AT TABLE ONE AND LOOKING AT 9-1-81, WHERE YOU HAVE EQUIVALENT RATES FOR COMPOSITE OF 15.4 AND THEN YOU HAVE FORWARD RATE IN YEAR FIVE OF 15.9, OKAY?

THE WITNESS: I'M SORRY, WHAT DATE?

THE ARBITRATOR: 9-1-81. READING ACROSS.

THE WITNESS: YES.

THE ARBITRATOR: IN THE FIRST YEAR IN THE FORWARD RATE IN YEAR ONE, YOU HAVE 18.3. AND THEN FIVE YEARS LATER IT'S 15.9.

THE WITNESS: RIGHT.

THE ARBITRATOR: AGAIN, YOU'RE TALKING IN TERMS OF GOVERNMENT BONDS AND TREASURY BILLS AND THINGS OF THAT SORT.

I WAS LOOKING AT THE FIGURE FOR 9-1-86, WHERE WE HAVE THE YEAR ONE IS 5.6 AND FIVE-YEAR PERIOD IS 7.9.

THE WITNESS: UH-HUH.

THE ARBITRATOR: THESE ARE ACTUAL FIGURES YOU'RE TALKING ABOUT NOW, AREN'T THEY?

THE WITNESS: YES.

THE ARBITRATOR: ISN'T IT TRUE THAT WHEN AN ACTUARY DETERMINES IN PENSION FUNDS INTEREST ASSUMPTIONS, THAT HE DOESN'T LOOK IN PERIOD OF SHORT PERIODS, HE LOOKS IN PERIODS OF LONG PERIODS, DOES HE NOT?

[p. 215] THE WITNESS: YES.

THE ARBITRATOR: YOU DON'T CHANGE YOUR INTEREST ASSUMPTION EVERY YEAR, DO YOU?

THE WITNESS: WELL, IN A TYPICAL EVALUATION PROCESS YOU WOULD NOT, BECAUSE

FRANKLY THERE'S - YOU KNOW IF YOU ARE MISSED TODAY, YOU'LL CATCH UP TOMORROW. AND SO FOR SIMPLICITY OF CALCULATIONS, ACTUARIES TYPICALLY USE ONE INTEREST RATE, SIX PERCENT OR SOMETHING LIKE THAT.

TO TRY TO PUT A LOT OF ACCURACY - IN THIS KIND OF CALCULATION, I MEAN, ACTUAL MONEY CHANGES HANDS, AND I THINK IT'S IMPORTANT TO INTRODUCE MORE PRECISION INTO THE PROCESS. AND SO WE ACTUALLY HAVE CHANGED INTEREST RATES EVERY YEAR IN OUR CALCULATIONS.

THE ARBITRATOR: I REALIZE YOU HAVE IN YOUR CALCULATIONS.

THE WITNESS: NORMALLY THAT WOULD NOT BE DONE, YOU'RE RIGHT.

THE ARBITRATOR: I'M TALKING ABOUT MEPA [SIC] AND MULTI-EMPLOYER PLANS, AS OPPOSED TO SOMETHING ELSE.

THE WITNESS: ALL RIGHT.

THE ARBITRATOR: BECAUSE I RECALL THERE WAS A PERIOD OF TIME WHEN THE TRUST FUNDS WENT AWAY FROM EQUITY AND WENT TO TREASURY BILLS AND CD'S, BECAUSE THE INTEREST RATES WERE 16 AND 17 PERCENT, WHEREAS [p. 216] YOU WEREN'T GETTING ANYTHING LIKE THAT IN YOUR EQUITY.

BUT LOOKING AT THE LONG RUN, THE INTEREST ASSUMPTIONS, BECAUSE YOU HAPPEN TO GET 13, 14, 15 PERCENT INTEREST, AS I RECALL WAS NOT

CHANGED BY THE ACTUARIES BECAUSE THEY'RE LOOKING FOR THE LONG VIEWPOINT. AND THEY CAME UP WITH AN ASSUMPTION THAT I THOUGHT THE WHOLE THEORY WAS THAT IT'S BASED ON THE – ON THE SITUATION OF A LONG PERIOD OF TIME RATHER THAN TWO, THREE, FOUR YEARS.

THE WITNESS: YOU'RE RIGHT. LET ME EXPLAIN, AND I THINK IF THERE'S ANY APPEARANCE OF CONFLICT IN MY TESTIMONY BETWEEN WHAT HAPPENS IN AN ONGOING VALUATION AND WHAT HAPPENS ON A WITHDRAWAL LIABILITY, I THINK I CAN EXPLAIN THAT.

THE ARBITRATOR: I'D LIKE TO HEAR THAT.

THE WITNESS: ON THE – ON THE ONGOING VALUATION, YOU NOT ONLY, AS COUNSEL POINTED OUT, YOU HAVE MONEY COMING IN IN THE FUTURE, BUT YOU HAVE BENEFITS EARNED IN THE FUTURE. AND THAT'S REALLY WHAT CREATES THE NEED FOR CONSERVATISM, IF YOU WILL, BECAUSE YOU DON'T KNOW WHAT INTEREST RATE YOU CAN EARN ON THOSE MONIES AT THAT TIME.

YOU ALSO HAVE A REINVESTMENT PROBLEM BECAUSE, YOU KNOW, THE FUND IS AN ONGOING FUND AND YOU'RE PUTTING NEW MONEY IN ALL THE TIME, AND YOU [p. 217] HAVE REINVESTMENTS, AND THAT CREATES SOME UNCERTAINTY INTO THE FUTURE.

AND SO THAT'S WHY PEOPLE – ACTUARIES ARE SO CONSERVATIVE COMPARED TO REALLY WHAT I THINK THEY MIGHT REALLY SAY AS THEIR BEST

GUESS. I MEAN, I DON'T KNOW WHY YOU SHOULD SAY FOUR PERCENT LIKE THE P.B.G.C. DOES FAR OUT INTO THE FUTURE, ASSUMING WHY SHOULD THEY FORECAST INTEREST RATES COMING WAY DOWN. IT WOULD BE JUST AS EASY TO FORECAST THEIR GOING WAY – GOING UP.

IN THAT ONGOING VALUATION YOU HAVE BENEFITS EARNED IN THE FUTURE AND YOU HAVE A LOT OF REINVESTMENTS. THIS IS DIFFERENT FROM THE POINT COUNSEL IS MAKING ABOUT YOU DON'T HAVE ALL THE MONEY TODAY. THE POINT IS, THE WHOLE POINT OF THIS WITHDRAWAL CALCULATION IS HOW MUCH IN EXHIBIT 16-A, -B, -C AND -D, THE WHOLE THING IS MAKE US WHOLE TODAY. THAT'S WHAT THE WHOLE POINT OF THESE CALCULATIONS IS.

SO THEY'VE GOT THE MONEY ON HAND, THEORETICALLY. AND THAT'S WHY IT'S APPROPRIATE TO USE THESE HIGHER ASSUMPTIONS THAT ARE IN THE MARKETPLACE TODAY AND NO NEED TO INTRODUCE ANY CONSERVATISM. IN THE ONGOING VALUATION, YOU'VE GOT BENEFITS THAT ARE GOING TO BE EARNED IN THE FUTURE, THAT'S NOT APPROPRIATE TO THIS. YOU HAVE [p. 218] REINVESTMENTS.

IN A WITHDRAWAL LIABILITY SITUATION, IF YOU'RE JUST MEASURING THOSE BENEFITS, THE CASH FLOW WOULD BE USED TO PAY THE BENEFITS, THERE'S NO NEW MONEY COMING IN. I MEAN, I'M OVERSIMPLIFYING A LITTLE BIT. YOU MAY HAVE TO REINVEST A LITTLE BIT SOMETIMES. BUT THERE'S

NO NEED FOR THE CONSERVATISM IN THIS TYPE OF THING.

THE CONCEPT OR THE PHENOMENON THAT YOU'RE DISCUSSING COMES ABOUT IN THE ACTUARIAL EVALUATION ON ONGOING PLANS. I THINK EVERYBODY'S USED TO THAT, EVERYBODY DOES IT EVERY YEAR. SO WHEN A DIFFERENT KIND OF THING COMES ALONG, THEY GO BACK TO WHAT THEY KNOW AND UNDERSTAND, AND THEY CAN SIMPLY CALCULATE. THEY DON'T WANT TO INTRODUCE PRECISION BECAUSE MAYBE THEY DON'T HAVE A COMPUTER PROGRAM THAT'S CAPABLE OF TAKING IN 30 DIFFERENT INTEREST RATES. AND EVEN IF THEY DID, MAYBE THEIR CLIENT WOULD PUT UP, YOU KNOW, A FUSS ABOUT PAYING FOR THOSE CALCULATIONS. SO THINGS – PEOPLE DO WHAT'S SIMPLE AND THEY DO WHAT'S CONVENIENT.

THE ARBITRATOR: ISN'T IT TRUE THAT ONE OF THE REASONS THE LEGISLATURE TALKED IN TERMS OF REASONABLENESS IS BECAUSE OF THE FACT THAT THEY WANTED TO MAKE THE INDIVIDUAL BENEFICIARIES WHO WERE GETTING THEIR BENEFITS FROM THIS FUND, KNOWING THAT [p. 219] SOMETIME WHEN THEY RETIRE, OR WHAT HAVE YOU, THEY'LL BE GETTING SOME MONEY OUT OF THE FUND AND NOT RUN INTO A STUDEBAKER SITUATION AND THINGS OF THAT SORT?

SO WHEN THEY TALK ABOUT BEING CONSERVATIVE, THEY DIDN'T WANT THE FUNDS TO BE OVERLY SPECULATIVE IN REGARD TO GETTING

HIGH INTEREST RATES WITH THE PROPOSITION THEY MIGHT LOSE IT ALL. IN OTHER WORDS, THEY DIDN'T WANT A SITUATION LIKE WE HAD IN OCTOBER, WHEN YOU DROPPED 500 POINTS AND WIPED OUT SOME TRUST FUNDS. THAT'S WHY THEY WANTED THEM TO DIVERSIFY, THAT SORT OF THING. ISN'T THAT ONE OF THE REASONS THAT YOU HAVE TO LOOK AT THE INTEREST RATES ON WHAT YOU CALL A CONSERVATIVE BASIS, AND THEN THE ONLY QUESTION IS, IS WHAT IS CONSERVATIVE AND WHAT IS REASONABLE? THAT'S THE REASON I GUESS WE'RE HERE. BUT I CERTAINLY HAVE ALWAYS UNDERSTOOD THAT GOING FOR THE HIGHEST INTEREST RATE IS NOT THE JOB OF THE TRUSTEES, NOR WOULD IT BE YOUR JOB AS AN ACTUARY TO SAY THE ONLY RATE YOU CAN GET IS THE HIGHEST RATE, AND THAT'S THE ONLY THING YOU CAN INVEST IN. I'M SURE YOU WOULDN'T DO THAT, WOULD YOU?

THE WITNESS: I AGREE WITH YOU THAT IT'S NOT ALWAYS PROPER TO GO FOR THE HIGHEST RATE, WHICH WOULD BE SOMETHING SPECULATIVE LIKE EQUITIES. BUT AT THIS POINT IN TIME IN THE MARKETPLACE THERE WERE PERFECTLY, 100 PERCENT SAFE SECURITIES, U.S. – THIS [p. 220] IS ALL THIS IS BASED ON IS THE SAFEST POSSIBLE SECURITIES. I MEAN, THAT'S WHY I'M SAYING YOU COULD MAYBE EVEN HAVE LOWER WITHDRAWAL LIABILITIES BECAUSE YOU COULD – THEORETICALLY, EVERY ECONOMIST YOU TALK TO WOULD SAY YOU SHOULD EVEN BE ABLE TO EARN MORE IF YOU TAKE RISK.

I AGREE WITH YOU, OR AGREE TO THE EXTENT THAT I DIDN'T WANT TO HAVE TO DEFEND THAT KIND OF PRACTICE HERE TODAY. THAT'S WHY I CHOSE THE BUCK FORWARD INTEREST RATES, WHICH IS BASED ON RISK-FREE SECURITIES. AND THE IDEA IS THAT THERE'S REALLY – I'M OVERSIMPLIFYING HERE, BUT THERE'S NO REINVESTMENT RISK IN THIS TYPE OF CALCULATION. IN THE ONGOING VALUATION, THEY'RE GOING TO BE PUTTING IN NEW MONEY NEXT YEAR.

THE ARBITRATOR: I HAVE ONLY ONE MORE QUESTION, AND THEN I'LL GET OUT OF THIS PICTURE ENTIRELY.

THIS BUCK FORWARD INTEREST RATE INDEX THAT YOU'VE GOT HERE, DO YOU KNOW OF ANY MULTI-EMPLOYER PLAN THAT USES THIS THEORY OR DOCTRINE?

THE WITNESS: I COULDN'T TELL YOU THE NAME. I – YOU MEAN, IN THEIR ACTUAL WITHDRAWAL LIABILITY CALCULATIONS?

THE ARBITRATOR: YES.

THE WITNESS: NO, I DON'T THINK THERE ARE ANY.

THE ARBITRATOR: GO AHEAD.

[p. 221] Q BY MR. BEERS: WHAT RATE –

DO YOU WANT ME TO CONTINUE THE CROSS?

MR. NELSON: GO AHEAD.

Q BY MR. BEERS: WHAT RATE DID YOU USE AGAIN IN CALCULATING THE FIRST TWO EXHIBITS, 15-A AND -B?

A 15-A AND -B?

Q WHAT RATE WOULD BE USED?

MR. NELSON: THE PROPER TERM WOULD BE RATES THE SAME AS RATES WHEN TALKING ABOUT THE P.B.G.C.

Q BY MR. BEERS: 16-A AND -B. WHAT RATES DID YOU USE TO DISCOUNT THOSE TO DETERMINE THE WITHDRAWAL LIABILITY IN THOSE TWO EXHIBITS, -A AND -B?

A WE USED ESSENTIALLY THE FORWARD RATES –

Q SPECIFICALLY, WHAT'S THE NUMBER THAT YOU PLUGGED IN?

A WELL, WE USED – ON THE LEFT HALF OF THE PAGE YOU SEE THE EQUIVALENT RATES?

Q YOU'RE TALKING ABOUT EXHIBIT 15 NOW.

A I'M SORRY, YES. BUT YOUR QESTION WAS ON EXHIBIT 16.

Q CORRECT.

A I'M BASING MY ANSWER ON EXHIBIT 15.

Q YOU USE THE VALUE WHERE?

A ON THE LEFT-HAND SIDE OF THE PAGE THERE ARE THREE COLUMNS ENTITLED "EQUIVALENT RATES." AND THOSE ESSENTIALLY ARE, FOR

EASE OF DISCUSSION WE CAN SAY [p. 222] ARE ONE SINGLE RATE OVER ALL TIME THAT ARE EQUIVALENT TO THE FORWARD RATES ON THE RIGHT-HAND SIDE OF THE PAGE. SO FOR EASE OF DISCUSSION, I THINK AS WHEN WE DID CALCULATIONS AS OF 12-31-79, WE ACTUALLY USED THE 1-1-80 RATES OF 10.4 AND 10.7.

Q 10.4 AND 10.7?

A AND 10.2. YOU MIGHT FEEL THAT THAT'S WRONG AND WE SHOULD HAVE USED THE 12-1-79. POINT IN FACT, WHAT WE DID WAS MORE CONSERVATIVE, I.E., A HIGHER WITHDRAWAL LIABILITY, AND WE – THE 1-1-80 WAS A POINT IN TIME AND THAT WAS ESSENTIALLY THE CLOSEST IN TIME TO 12-31-79. SO WE WERE ONE DAY REMOVED. AND I'M SURE THAT THE INTEREST RATES DID NOT CHANGE VERY SIGNIFICANTLY OVER THAT ONE DAY.

Q DO YOU KNOW IF ANY TRUST FUND ANYWHERE, ANY MULTI-EMPLOYER PENSION TRUST FUND THAT USES OVER A TEN PERCENT RATE IN DISCOUNTING THE UNFUNDED VESTED LIABILITY?

A I'M REALLY NOT FAMILIAR WITH – NO, I'M NOT.

Q YOU DON'T KNOW?

A NO.

Q ANOTHER POINT THAT BOTHERS ME. YOU'RE TALKING ABOUT HOW IF YOU HAVE IN HAND THIS WITHDRAWAL LIABILITY PAYMENT, IT DOESN'T MAKE ANY DIFFERENCE THAT YOU'RE TALKING ABOUT FUTURE MONIES. WHAT ABOUT [p.

223] WITHDRAWAL LIABILITY PAYMENTS PAID IN INSTALLMENTS? DOESN'T THAT TAKE THAT ARGUMENT AWAY? YOU ARE TALKING ABOUT INVESTING MONEY THAT'S NOT IN HAND AT THAT TIME; IS THAT CORRECT?

MR. NELSON: THAT DEFINITELY IS TWO QUESTIONS.

THE ARBITRATOR: WHY DON'T YOU BREAK IT DOWN.

MR. BEERS: I'LL BREAK IT DOWN INTO TWO. IN FACT I'LL ASK THE ONE QUESTION.

Q WHEN A WITHDRAWING EMPLOYER DECIDES TO PAY THE WITHDRAWAL LIABILITY USING PAYMENTS OVER A PERIOD OF YEARS, THE MONEY IS NOT IN HAND AT THE TIME OF THE WITHDRAWAL; IS THAT CORRECT?

A CORRECT.

Q YOU CAN'T GO OUT AND LOCK IN SOME INTEREST-BEARING INVESTMENT WITH MONEY YOU DON'T HAVE ON HAND; IS THAT CORRECT?

A RIGHT.

MR. BEERS: NO FURTHER QUESTIONS.

THE ARBITRATOR: MR. NELSON?

REDIRECT EXAMINATION

BY MR. NELSON:

Q MR. KING, THE ASSUMPTIONS THAT ARE BEING USED IN MAKING THE CALCULATIONS

WHICH RESULTED IN EXHIBITS 16-A THROUGH -D ARE BASIC ACTUARIAL ASSUMPTIONS, AREN'T THEY?

[p. 224] A WOULD YOU REPEAT THE QUESTION?

Q I PROBABLY SHOULD.

IN PERFORMING THE ANALYSIS AND DOING THE CALCULATIONS THAT RESULTED IN EXHIBITS 16-A THROUGH -D, DID YOU USE ACTUARIAL ASSUMPTIONS WHICH WOULD BE COMMONLY USED THROUGHOUT THE ACTUARIAL SCIENCES?

A YES.

Q WOULD THOSE ASSUMPTIONS CHANGE DEPENDING UPON THE NUMBER OF EMPLOYERS WHO HAPPENED TO BE PARTICIPATING IN THE PENSION PLAN?

A NO.

Q IN OTHER WORDS, DOES IT MAKE A DIFFERENCE WHETHER THERE'S TEN EMPLOYERS OR ONE EMPLOYER?

A NO. I WOULDN'T THINK SO.

Q WITH RESPECT TO YOUR CURRENT EMPLOYER - MR. BATES MAY HAVE ALREADY ANSWERED THAT.

DOES BUCK CONSULTANTS CURRENTLY REPRESENT ANY MULTI-EMPLOYER TRUST FUNDS?

A I THINK WE REPRESENT A COUPLE.

Q DO YOU REPRESENT ANY IN CALIFORNIA?

A NOT TO MY KNOWLEDGE.

MR. NELSON: I HAVE NO FURTHER QUESTIONS.

MR. BEERS: I NOW HAVE SOME QUESTIONS ON EXHIBIT 16.

[p. 225] RECROSS-EXAMINATION

BY MR. BEERS:

Q LET ME CLARIFY THAT TO MAKE SURE WE HEARD THAT RIGHT.

YOU SAID THAT THE RATES YOU USED TO CALCULATE THE WITHDRAWAL LIABILITY IN EXHIBIT 16 WERE THE RATES IN '79; IS THAT CORRECT?

A WELL, WE DID BOTH AS OF 12-31-79 AND AS OF 12-31-80 TO COME UP WITH TWO DIFFERENT POOLS.

Q SO THE RATES YOU USED SPECIFICALLY WERE WHICH ONES? THE 12-1-79 RATE?

A THE 1-1-80 AND 1-1-81.

Q THE 1-1-80 AND THE 1-1-81 ARE THE TWO RATES YOU USED?

A YOU MIGHT NOTE THAT THOSE ARE CONSERVATIVE COMPARED TO WHAT HIGHER WITHDRAWAL LIABILITIES THAN THE 12-80 AND THE 12-79.

Q YOU WERE SAYING THAT YOU USED STANDARD ACTUARIAL ASSUMPTIONS IN COMING UP

WITH YOUR CONCLUSIONS AS TO YOUR WITHDRAWAL LIABILITY IN EXHIBIT 16-A, -B, -C AND -D. WHAT WERE THOSE STANDARD ACTUARIAL ASSUMPTIONS?

A I THINK SOME OF THE ASSUMPTIONS, THE DEMOGRAPHIC ASSUMPTIONS SEGAL WAS MAKING.

Q YOU USED THE SAME MORTALITY TABLE?

A YES.

[p. 226] Q YOU USED THE SAME ASSUMPTIONS REGARDING UNRECORDED CREDIT?

A YES. EVEN THOUGH I WASN'T QUITE CONVINCED THAT THAT WAS REASONABLE.

Q DID YOU HAVE ACCESS TO ANY INFORMATION IN ADDITION TO WHAT'S IN THE REPORTS THAT ARE EXHIBITS -C AND -D, 7-C AND -D? FOR EXAMPLE, DID YOU HAVE ACCESS TO CENSUS DATA FOR ALL THE MEMBERS OF THE FUND?

A NO.

Q DID YOU CALCULATE ANY VALUES PER PARTICULAR PARTICIPANT?

A NO, WE TRIED – WE ASKED FOR THE CASH FLOWS THAT WERE PROJECTED BY SEGAL. THEN WE COULD HAVE DONE A VERY, VERY PRECISE CALCULATION WITH OUR FORWARD INTEREST RATES, BUT THEY WERE NOT AVAILABLE.

MR. NELSON: WE HAD A LITTLE DISCUSSION YESTERDAY ABOUT TRYING TO FIGURE OUT

WHAT THE CASH FLOWS WERE IN DISCOVERY, AND WE WERE HAVING A LITTLE DIFFICULTY IN COMMUNICATING WHAT WE WERE TALKING ABOUT. I THINK WE JUST DISCOVERED WHAT WE WERE COMMUNICATING ABOUT.

(BRIEF PAUSE.)

MR. BEERS: I HAVE JUST TWO OTHER QUESTIONS.

Q NUMBER ONE, DID YOU ACCOUNT FOR THE EXPENSE OF RUNNING THE FUND IN CHOOSING THE INTEREST RATES YOU WERE USING TO CALCULATE WITHDRAWAL LIABILITY?

[p. 227] A NO. I THOUGHT ABOUT THAT AND I CAME TO THE CONCLUSION THAT THE EXPENSES OF THE FUND WERE GOING TO BE THE SAME WHETHER THIS EMPLOYER WITHDREW OR NOT, SO THAT I DID NOT TAKE THAT INTO ACCOUNT.

Q ANOTHER THING, DO YOU KNOW WHAT KIND OF MORTALITY TABLE P.B.G.C. USES IN CALCULATING THEIR RATES THAT THEY PUBLISH, RESULTING FROM THEIR SURVEY?

MR. NELSON: COULD WE GET SOME FOUNDATION AS TO WHEN?

Q BY MR. BEERS: LET'S SEE, LET'S MAKE IT DURING 1980 AND '81.

A I HAVE A ROUGH IDEA OF IT. I HAVEN'T LOOKED AT IT IN QUITE AWHILE.

Q HOW DO THOSE MORTALITY TABLES COMPARE TO INSURANCE COMPANY MORTALITY TABLES?

A I REALLY DON'T KNOW.

Q YOU DON'T KNOW WHETHER THEY'RE MORE OR LESS CONSERVATIVE?

A NO, I DON'T.

Q WOULD THAT HAVE AN EFFECT ON THE REASONABLENESS OF THE RATES –

A I DON'T THINK THEY WERE USED IN THE –

Q LET ME JUT FINISH THE QUESTION SO IT'S ALL ON THE RECORD.

WOULD THE MORTALITY TABLE USED HAVE AN [p. 228] EFFECT UPON THE RATES THAT THE P.B.G.C. ENDS UP PUBLISHING TO SHOW THE PURCHASE VALUE OF ANNUITIES?

A WOULD YOU JUST REPEAT THAT?

Q WOULD THE MORTALITY TABLE USED HAVE AN EFFECT ON THE INTEREST RATES PUBLISHED BY THE P.B.G.C. BASED UPON THEIR SURVEY OF THE INSURANCE COMPANIES?

A NO.

Q A MORE CONSERVATIVE OR LESS CONSERVATIVE MORTALITY TABLE WOULDN'T AFFECT THE NUMBERS AT ALL; IS THAT WHAT YOU'RE SAYING?

MR. NELSON: LET ME INTERPOSE ONE MINOR OBJECTION, WHICH IS KIND OF CONVOLUTED, BUT HE'S NOT THE P.B.G.C. WHETHER THAT

PARTICULAR GOVERNMENT AGENCY WOULD TAKE THE MORTALITY AND THEIR ACTUARIES WOULD TAKE THAT MORTALITY TABLE INTO ACCOUNT IN SETTING THEIR RATES IS A QUESTION I THINK YOU'D HAVE TO ASK THE P.B.G.C.

MR. BEERS: THAT'S A GOOD POINT. LET ME ASK IT IN THE ABSTRACT.

Q DOES THE MORTALITY TABLE YOU USE AFFECT YOUR DETERMINATION – FOR EXAMPLE, IN VALUING THE FUNDING ASSUMPTIONS – IN VALUING THE TRUST TO COME UP WITH A NET INVESTMENT RETURN, DOES CHANGING YOUR MORTALITY TABLE HAVE AN EFFECT ON THE RATE YOU END UP WITH IF YOU USE A DIFFERENT MORTALITY TABLE KEEPING ALL THE [p. 229] ASSUMPTIONS THE SAME, DO YOU END UP WITH A DIFFERENT NET ASSUMPTION RATE?

A THE QUESTION IS TOTALITY AND OF COURSE NOT. YOU ASSUME THAT YOU CHANGE NO OTHER ASSUMPTION, AND THEN YOU ASK IF YOU CHANGE JUST THE MORTALITY, WILL THAT CHANGE THE INVESTMENT. OF COURSE NOT, BY DEFINITION.

Q MORE PRECISELY, I GUESS WHAT I WANT TO DO IS THE WITHDRAWING LIABILITY, NOT THE –

A OF COURSE.

Q THE WITHDRAWAL LIABILITY, IF YOU CHANGE THE MORTALITY TABLE, IS IT CORRECT YOU END UP CHANGING THE DISCOUNT RATE FOR

THE UNFUNDED VESTED LIABILITY, ASSUMING ALL OTHER ASSUMPTIONS STAY THE SAME?

A THE QUESTION IS MEANINGLESS.

Q THE ANSWER IS IT DOES CHANGE IT?

THE ARBITRATOR: THAT ISN'T WHAT HE SAID.

MR. NELSON: WITHOUT PUTTING WORDS IN HIS MOUTH, I DON'T KNOW THAT YOU TWO ARE SPEAKING THE SAME LANGUAGE.

MR. BEERS: WE MIGHT NOT BE, SO I'LL SKIP THAT QUESTION FOR NOW.

THAT'S ALL THE QUESTIONS I HAVE.

MR. NELSON: JUST ONE.

THE ARBITRATOR: GO AHEAD.

[p. 230] FURTHER REDIRECT EXAMINATION

BY MR. NELSON:

Q DOES THE FACT THAT THE WITHDRAWAL LIABILITY PAYMENTS ARE PAID IN INSTALLMENTS HAVE AN IMPACT UPON THE REASONABLENESS OF THE ASSUMPTION USED?

A WELL, I THINK –

Q I GUESS THE INTEREST ASSUMPTION USED.

A TO ME, THE PROPER WAY, AND THAT GETS BACK TO THE QUESTION OF COUNSEL EARLIER, THAT THE FACT THAT YOU DON'T HAVE ALL OF

THE ASSETS ON HAND IF THE WITHDRAWING EMPLOYER IS GOING TO PAY IN INSTALLMENTS, DOESN'T MEAN THAT SIX PERCENT IS THE RIGHT INTEREST RATE TO USE. I THINK THE CORRECT WAY TO HANDLE THAT SITUATION IS TO USE A REASONABLE INTEREST RATE IN CALCULATING THE WITHDRAWAL LIABILITY AND USE A REASONABLE INTEREST RATE IN CALCULATING THE PAYMENTS.

WHAT IS BEING DONE HERE IS AN UNREASONABLE RATE, COMPOUNDED WITH ANOTHER UNREASONABLE RATE, AND HOPING FOR A REASONABLE RESULT. BUT TO ME, THE PROPER, THEORETICAL APPROACH IS TO CALCULATE ON THE SINGLE SUM, ON REASONABLE ASSUMPTIONS AND THEN CALCULATE THE WITHDRAWAL LIABILITIES OR PAYMENTS ON REASONABLE ASSUMPTIONS. I RECOGNIZE THAT'S NOT STATUTE. STATUES [SIC] SAYS USE THE FUNDING ASSUMPTION. I THINK THE POINT IS TO CALCULATE IT USING A WITHDRAWAL [p. 231] LIABILITY REASONABLY FIRST. YOU HAVE TO DO THAT TO GET THAT AFTER IT.

Q LET ME JUST, AS A POINT OF CLARIFICATION, MAYBE FOR THE COURT REPORTER'S BENEFIT. YOU WERE SAYING ON REASONABLE ASSUMPTIONS AS OPPOSED TO UNREASONABLE ASSUMPTIONS?

A YES.

Q I WAS HAVING TROUBLE HEARING IT OVER HERE.

FURTHER RECROSS EXAMINATION

BY MR. BEERS:

Q ONE LAST QUESTION. CAN THERE BE MORE THAN ONE BEST ESTIMATE OF THE UNFUNDED VESTED LIABILITY FOR A PARTICULAR PENSION FUND UNDER MEPA [SIC]?

MR. NELSON: I THINK THAT CALLS FOR A LEGAL CONCLUSION.

MR. BEERS: HE TESTIFIED HE'S GOT AN UNDERSTANDING OF WHAT REASONABLE MEANS UNDER THE ACT, AND HE'S TESTIFYING USING TERMS FROM THE ACT, TERMS OF ART FROM THE ACT. I THINK THAT'S WITHIN HIS AREA OF EXPERTISE AND NECESSARY TO SEE WHAT HIS CONCLUSION IS THERE. HE CAN DEFINE THE TERM IF HE HAS HIS OWN MEANING AS TO WHAT BEST ESTIMATE IS.

MR. NELSON: I GUESS I'M MORE CONCERNED WITHOUT INTRUDING TOO FAR WITH COULD ANYONE ACTUALLY HAVE MORE THAN ONE BEST ESTIMATE AS TO WHAT A [p. 232] REASONABLE –

MR. BEERS: LET ME RESTATE THE QUESTION.

Q CAN TWO DIFFERENT ACTUARIES HAVE DIFFERENT BEST ESTIMATES OF THE UNFUNDED VESTED LIABILITY OF THE SAME PLAN?

A YES.

MR. BEERS: THANK YOU. THAT'S IT.

THE ARBITRATOR: NOTHING MORE?

LET'S SEE WHETHER I UNDERSTAND SOMETHING MYSELF. IN COMING TO YOUR CONCLUSIONS IN REGARD TO THE INTEREST ASSUMPTIONS BEING REASONABLE OR UNREASONABLE, WHEN YOU COME TO AN INTERESTING ASSUMPTION, DON'T YOU TAKE MORTALITY TABLES AS A FACTOR TO BE CONSIDERED IN COMING TO THAT CONCLUSION?

THE WITNESS: IF – IF I CHANGE THE INTEREST RATE, THAT DOESN'T MEAN I AUTOMATICALLY CHANGE – IF I CHANGE A MORTALITY TABLE, IT DOESN'T MEAN I AUTOMATICALLY CHANGE AN INTEREST RATE. THERE'S NO CONNECTION, THERE'S A COUPLE LEVERS MOVE AND YOU HIT SOMETHING AND THE INTEREST RATE CHANGES.

BUT I THINK WHAT YOU'RE GETTING AT IS IF THE MORTALITY ASSUMPTION IS WRONG, CAN YOU MAKE UP FOR THAT WITH A CORRESPONDING, AN OFFSETTING ERROR IN THE INTEREST RATE, YES.

THE ARBITRATOR: I JUST MEANT THAT IN COMING TO [p. 233] THE INTEREST RATE ASSUMPTION, I THOUGHT THERE WAS CERTAIN FACTORS THAT ACTUARIES TAKE INTO CONSIDERATION.

MR. BEERS: IF I COULD INTERRUPT FOR JUST A MOMENT I THINK I KNOW WHERE I WAS GOING WRONG WITH MY QUESTIONS NOW. I WAS PHRASING IT, AND MAYBE YOU'RE TRYING TO GET TO THE SAME PLACE I WAS.

WHEN YOU'RE TALKING ABOUT JUST THE LIABILITY SIDE –

THE WITNESS: UH-HUH.

MR. BEERS: – YOU'RE TALKING ABOUT PREDICTING WHAT THE FUTURE LIABILITIES ARE, AND YOU'RE NOT TALKING ABOUT THE INVESTMENT RETURN. WHEN YOU CHANGE THE MORTALITY TABLES, THAT DOES HAVE AN EFFECT ON THE VESTED LIABILITY IN THE FUTURE; IS THAT CORRECT?

THE WITNESS: THAT'S CORRECT.

THE ARBITRATOR: THAT'S WHAT I WAS TRYING TO GET AT.

THE WITNESS: ABSOLUTELY. IT DOESN'T HAVE AN AFFECT ON THE INTEREST RATE.

THE ARBITRATOR: THAT'S WHERE I WAS HAVING A PROBLEM.

ANYTHING ELSE?

MR. NELSON: NO.

THE ARBITRATOR: THANK YOU VERY MUCH, MR. KING.

THE WITNESS: IT WAS A PLEASURE.

[p. 234] THE ARBITRATOR: YOU'RE EXCUSED.

MR. NELSON, DO YOU HAVE ANY OTHER WITNESSES?

MR. NELSON: NO, I DO NOT.

THE ARBITRATOR: MR. BEERS.

MR. BEERS: THE TRUST WOULD LIKE TO CALL MR. BATES TO THE STAND.

MAREL K. BATES,

CALLED AS A WITNESS BY THE FUND, HAVING BEEN PREVIOUSLY DULY SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

THE ARBITRATOR: LET THE RECORD SHOW THAT THIS WITNESS HAS BEEN PREVIOUSLY SWORN.

DIRECT EXAMINATION

BY. MR. BEERS:

Q MR. BATES, I WANT TO REFER TO THE TRUST EXHIBIT NUMBER 5. I'LL HAND YOU A COPY OF IT. THAT'S YOUR RESUME. WHAT IS YOUR EDUCATIONAL BACKGROUND?

A I RECEIVED MY BACHELORS IN MATHEMATICS IN JANUARY 1966 AT THE UNIVERSITY OF CALIFORNIA, BERKELEY. I RECEIVED A MASTERS IN MATHEMATICS AT U.C.L.A. IN JUNE OF 1967. AND I STUDIED FURTHER AT [p. 235] U.C.L.A. THROUGH THE COURSE AND PH.D. QUALIFYING EXAMINATION, BUT I DID NOT COMPLETE MY DOCTORATE AT U.C.L.A. THEN MY FURTHER EDUCATION IN ACTUARIAL SCIENCE AT NORTHEASTERN UNIVERSITY

AND LEAVES OF ABSENCE IN '76, '77 AND '79. AND I'VE HAD SEMINARS IN ECONOMICS SINCE THEN.

Q WHAT HAS BEEN YOUR EXPERIENCE AS AN ACTUARY?

MR. NELSON: I'LL STIPULATE HE'S AN EXPERIENCED ACTUARY.

MR. BEERS: THAT'S FINE. IT WILL ONLY TAKE A COUPLE OF MINUTES. IT WILL ONLY TAKE A COUPLE OF MINUTES TO GO THROUGH HIS RESUME.

THE WITNESS: I'VE ONLY BEEN WITH ONE COMPANY, MARTIN SEGAL COMPANY, SINCE 1971.

Q BY MR. BEERS: WHAT POSITIONS HAVE YOU HELD WITH THE MARTIN SEGAL COMPANY?

A BEGINNING AS AN ACTUARIAL CLERK, AND IN 1984 I WAS MADE CHAIRMAN OF THE DEPARTMENT AND THE VICE-PRESIDENT OF THE COMPANY.

Q WHAT IS YOUR CURRENT POSITION, VICE-PRESIDENT?

A VICE-PRESIDENT AND ACTUARY IS MY TITLE.

Q YOU'RE LOCATED IN THE LOS ANGELES OFFICE?

A YES.

Q YOU'RE AN ENROLLED ACTUARY; IS THAT [p. 236] CORRECT?

A YES.

MR. NELSON: THEY BOTH ARE.

Q BY MR. BEERS: YOU'VE BEEN IN THE ROOM WHILE MR. KING HAS TESTIFIED ABOUT HIS METHOD FOR CALCULATING WITHDRAWAL LIABILITY?

A YES.

Q DO YOU HAVE RESERVATIONS AS TO THE REASONABLENESS OF THE METHODS HE USED IN CALCULATING WITHDRAWAL LIABILITY?

A YES.

Q COULD YOU LIST SOME OF THOSE FOR US?

A WELL, MORE OR LESS, IN ORDER, HE STATES THAT THE P.B.G.C. RATES ARE TOO CONSERVATIVE, AS I UNDERSTOOD IT, BY ONE HUNDRED BASIS POINTS ON THE INTEREST ASSUMPTION FROM COMPETITIVE ANNUITY PURCHASE RATES.

MR. NELSON: WITHOUT INTERRUPTING THE FLOW OF THE QUESTION TOO MUCH, WE'RE JUST GIVING HIS BASIS FOR THE RESERVATION, SO I DON'T NEED TO OBJECT TO THE CHARACTERIZATION OF THE TESTIMONY.

MR. BEERS: NO, YOU DON'T NEED TO. THE RECORD WILL SPEAK FOR ITSELF AS TO WHAT MR. KING SAID.

THE WITNESS: I HAVE NO KNOWLEDGE THAT THE RATES ARE THAT DIFFERENT. I HADN'T HEARD THAT THEY WERE THAT DIFFERENT, BUT THERE'S A REASON FOR THEM TO BE [p. 237] SOMEWHAT DIFFERENT, AND THAT IS, THAT THE P.B.G.C.

RATES ARE APPLIED TOGETHER WITH THEIR OWN MORTALITY TABLE, KNOWN AS THE UP, U.P. '84 TABLE, WHICH STANDS FOR UNISEX PENSIONER '84 MORTALITY TABLE.

WHEREAS INSURANCE COMPANIES USUALLY USE THEIR OWN MORTALITY TABLES, AND THE INSURANCE COMPANY MORTALITY TABLES, IN MY EXPERIENCE, ARE MORE CONSERVATIVE THAN THE UP '84 TABLE. SO IT IS POSSIBLE FOR THE P.B.G.C. AND AN INSURANCE COMPANY TO COME TO THE SAME LIABILITY WITH THE P.B.G.C. USING A LOWER INTEREST RATE, BECAUSE WHAT THEY TAKE WITH THE LOWER INTEREST RATE THEY GIVE WITH THE LESS CONSERVATIVE MORTALITY TABLE.

I SAY THAT IS POSSIBLE. MY SENSE IS THAT THEY DON'T GIVE AND TAKE EQUALLY, AND THAT THE P.B.G.C. RATES ARE A LITTLE BIT CONSERVATIVE. I WOULD BE SURPRISED IF THEY WERE AS CONSERVATIVE AS A HUNDRED BASIS POINTS.

WITH RESPECT IN THAT CONTEXT THE REMARK ABOUT AN OFFICER AT TRANSAMERICA – OCCIDENTAL –

MR. NELSON: WAIT, WAIT, WAIT. THE QUESTION WAS WHETHER OR NOT YOU HAD RESERVATIONS ABOUT – I DON'T WANT TO MISCHARACTERIZE THE QUESTION, BUT I THINK THE QUESTION WAS ABOUT –

MR. BEERS: LET'S GO AHEAD AND STICK TO THE MOMENT. WE'LL COME BACK TO THE – ACTUALLY THAT DOES [p. 238] APPLY TO WHAT HE'S

TALKING ABOUT. HE'S TALKING ABOUT THE P.B.G.C. RATES, AND IF I REMEMBER RIGHT, THE CONVERSATION HE'S REFERRING TO AS RECITED BY MR. KING IS ONE WHERE P.B.G.C. CALLED UP HIS OFFICES AND SOMEONE IN THE OFFICE ASKED HIM FOR A QUOTE. SO I THINK THAT'S CONTINUING ON HIS POINT THAT THE P.B.G.C. RATES, HE DISAGREES WITH MR. KING'S ANALYSIS OF THE P.B.G.C. RATES.

MR. NELSON: WITHOUT CONCEDING YOUR CHARACTERIZATION OF THE TESTIMONY, I THINK THE QUESTION YOU ASKED HIM WAS WHAT RESERVATIONS DID HE HAVE, AND NOW WHAT WE'RE GETTING IS ALL THE BACKGROUND. AND IT REALLY IS SORT OF TURNING INTO A POINT BY POINT WHO SAID WHAT AND –

MR. BEERS: LET ME ASK THE QUESTION, AND THAT'LL TAKE CARE OF IT.

MR. NELSON: IT WOULD BE EASIER.

Q BY MR. BEERS: YOU'VE STATED THAT YOU HAVE RESERVATIONS ABOUT MR. KING'S CHARACTERIZATION OF P.B.G.C. RATES AS BEING UNREASONABLE. DO YOU THINK – WHAT DO YOU THINK AS FAR AS VALUE IN AN ACTUARY'S DECISION-MAKING PROCESS OF MR. KING'S CONVERSATIONS HE RELATES REGARDING CALCULATION OF A RATE FOR THE P.B.G.C. BACK IN '75, I BELIEVE IT WAS?

A I DON'T THINK HE MENTIONED THE YEAR, AND I DON'T THINK HE MENTIONED THE P.B.G.C. ASKING HIM. I [p. 239] THINK HE MENTIONED AN OFFICER OF HIS COMPANY ASKING HIM FOR A RATE

AND HIM CITING A RATE THAT WAS NOT REASONABLE, AND THE OFFICER OF THE COMPANY NOT BEING TERRIBLY CONCERNED.

MY ONLY REMARK WAS THAT – THAT THE IMPLICATION SEEMED TO BE THAT THE RESPONSES TO THE P.B.G.C. MIGHT BE OF THAT SAME ORDER. AND IT SEEMED TO ME THAT SINCE P.B.G.C. HAS WAYS OF FINDING OUT WHAT RATES ARE IN FACT BEING APPLIED, SINCE THEY SUPERVISE VIRTUALLY ALL PLAN TERMINATIONS AND ANNUITY PURCHASES, THAT IT WOULDN'T BE SUCH A GOOD IDEA, IT WOULD SEEM TO ME, TO BE SO CAVALIER IN QUOTING A RATE TO P.B.G.C. THAT WOULD NOT BE ONE THAT YOU REALLY EXPECTED TO SELL BUSINESS AT.

Q WHAT IS ANOTHER RESERVATION THAT YOU HAVE ABOUT THE METHOD USED TO CALCULATE WITHDRAWAL LIABILITY BY MR. KING?

A THE PRIMARY ONE REALLY, IT GOES BACK TO THIS ISSUE OF ASSETS ON HAND VERSUS CONTRIBUTIONS TO COME IN IN THE FUTURE. THE BUCK FORWARD INTEREST RATE CALCULATION, AS I UNDERSTAND IT, HAS TO DO WITH WHAT HIS INTEREST RATES ARE APPLIED FOR MONIES ON HAND. AND THE SITUATION WITH THE WITHDRAWAL LIABILITY IS THAT PAYMENTS ARE NOT ON HAND TYPICALLY FROM THE WITHDRAWING EMPLOYER, AND USUALLY THERE ISN'T AN OFFER TO PAY THEM IN A LUMP SUM.

[p. 240] TO THE EXTENT THAT IF AN EMPLOYER SAID, I WILL PAY THE AMOUNT DUE IN A LUMP

SUM, PAYABLE ON OR ABOUT THE DAY THE FIRST PERIODIC PAYMENT WOULD BE DUE, THEN THERE WOULD BE LITTLE DISTINCTION. BUT THAT IS NOT, IN FACT, HOW IT NORMALLY WORKS. AND IN FACT, THE STATUTE PROVIDES FOR CHARGING THE EMPLOYER INTEREST AT VALUATION INTEREST RATE DURING THE PERIOD OF PAYMENTS.

SO WHAT IT AMOUNTS TO IS, THE – THE FUND HAS LOANED, IN A SENSE, THE FUNDS TO THE EMPLOYER AT A SIX PERCENT INTEREST RATE, AND THEN WILL BE RECEIVING THOSE FUNDS IN THE FUTURE. IN THIS CASE, I BELIEVE IT WAS OVER AN 11-YEAR PERIOD UNDER THE DEMAND LETTER, AND SOMETIMES THAT PERIOD DOESN'T START RIGHT AWAY EITHER. SO YOU'RE TALKING ABOUT ASSETS TO BE RECEIVED QUITE A BIT INTO THE FUTURE.

SO – AND YOU COMBINE THAT WITH THE FACT THAT THIS PERIOD, 1981, THE PERIOD OF THE WITHDRAWAL LIABILITY CALCULATIONS, JANUARY 1, 1981, YOU'RE TALKING ABOUT AN ABNORMALLY HISTORICAL PERIOD. YOU'RE TALKING ABOUT A PERIOD WHERE INTEREST RATES WERE VERY, VERY HIGH. AND THOSE INTEREST RATES ARE A FUNCTION OF THE SUPPLY AND DEMAND FOR CREDIT. AND BECAUSE OF THE ACTIONS OF THE FEDERAL RESERVE, THE SUPPLY OF CREDIT HAD BEEN CONSIDERABLY RESTRICTED AND INTEREST RATES HAD BEEN DRIVEN VERY HIGH. SO THERE'S [p. 241] VERY GOOD REASON TO THINK THAT THEN CURRENT RATES COULD NOT BE ACHIEVED ON MONIES TO BE RECEIVED FIVE OR TEN YEARS LATER.

Q AND IN FACT, INTEREST RATES NOW ARE SIMPLY LOWER; IS THAT CORRECT?

A THAT'S CORRECT. I MEAN, WHEN WE DID OUR CALCULATIONS OF WITHDRAWAL LIABILITY, WE FELT THAT WE KNEW THAT INTEREST RATES WOULD COME DOWN. WE DIDN'T KNOW WHEN OR HOW FAR, OF COURSE NOBODY REALLY DOES, BUT WE FELT THAT INTEREST RATES WOULD COME DOWN BECAUSE THEY WERE, YOU KNOW, A TEMPORARY SITUATION CAUSED BY THE ACTIONS OF THE FEDERAL GOVERNMENT.

LET ME SAY, THEN –

MR. NELSON: IS THERE A QUESTION PENDING?

Q BY MR. BEERS: THE QUESTION PENDING IS HE HAS A LIST IN HIS MIND OF PROBLEMS THAT HE HAD WITH MR. KING'S METHOD OF VALUING THE WITHDRAWAL LIABILITY FOR CONCRETE PIPE & PRODUCTS, AND I BELIEVE MR. BATES IS GOING THROUGH THAT LIST.

THE WITNESS: I HAVE ONLY TWO MORE.

ONE WAS JUST A BRIEF COMMENT ON, AND YOU DID ADDRESS IT WITH MR. KING, THAT IN EXHIBITS 16-A AND 16-B, THOSE LIABILITY AMOUNTS PROVIDES FOR NO EXPENSES AT ALL. YOU DIDN'T GET INTO IT, BUT 16-C AND 16-D HAVE WHATEVER EXPENSE ASSUMPTION THE P.B.G.C. IS USING. BUT 16-A AND 16-B HE USED THE [p. 242]

BUCK FORWARD INTEREST RATES WITH NO PROVISION WHATEVER FOR EXPENSES, SAYING THAT THE FUND WOULD HAVE THESE EXPENSES ANYWAY.

THAT MAY BE TRUE, BUT IT WOULD LEAVE THE ONGOING EMPLOYERS WITH THE BURDEN OF PAYING ALL THOSE EXPENSES. AND MY UNDERSTANDING OF THE ACT IS TO TRY, AND CERTAINLY OF OUR TWO-TIER METHOD AND SO ON, IS TO TRY TO LEAVE THE FUND AND THE WITHDRAWING EMPLOYER IN ROUGHLY EQUAL SHAPE. SO IT DOESN'T SEEM FAIR TO HIT THE ONGOING EMPLOYERS WITH ALL OF THE EXPENSES.

Q BY MR. BEERS: DID YOU HAVE ONE LAST ITEM ON YOUR LIST?

A YES. THERE WAS A REMARK ABOUT THE ONGOING VALUATION, AGAIN, MONEY ON HAND VERSUS FUTURE MONEY, AND WHETHER THAT WAS EVER APPLIED IN ONGOING VALUATIONS, AND ALL THAT IS NOT NORMALLY APPLIED. I AM AWARE OF TWO – A VERY LARGE IMPORTANT MULTI-EMPLOYER PLANS WHERE THAT DISTINCTION IS DRAWN. THE SOUTHERN CALIFORNIA CARPENTERS PENSION TRUST USES RIGHT NOW SEVEN PERCENT INTEREST ON ONGOING BASIS AND NINE PERCENT INTEREST ON CURRENT ASSETS ON THE NEXT FIVE YEARS, AND THE NATIONAL BOILERMAKERS – I'M SORRY, THE NATIONAL BAKERY AND CONFECTIONARY WORKERS USES A SIMILAR METHOD. I'M NOT SURE OF THE NUMBERS. THE FUND IS HANDLED BY OUR NEW YORK OFFICE, BUT I KNOW THEY USE THIS APPROACH FOR [p. 243] ONGOING VALUATION

PURPOSES WITH THE DIFFERENCE BETWEEN ASSETS ON HAND, ASSUMING – ASSUME TO EARN HIGHER RETURN THAN OTHER ASSETS, FOR A SHORT PERIOD.

Q THIS CAME OUT IN YOUR DIRECT EXAMINATION, OR MORE ACCURATELY CROSS-EXAMINATION WHEN YOU WERE AN ADVERSE WITNESS THIS MORNING, BUT I WANT TO GO OVER IT NOW IN SOME DETAIL. THE SEGAL COMPANY HAS SPENT A LOT OF TIME COMING UP WITH THIS TWO-TIER METHOD. CAN YOU EXPLAIN TO ME THE IMPORTANCE OF THAT AND WHY THAT ENDS UP WITH A REASONABLE DETERMINATION OF UNFUNDED VESTED LIABILITY AS OPPOSED TO OTHER METHODS FOR VALUING UNVESTED LIABILITY – VESTED LIABILITY?

MR. NELSON: I DON'T WANT TO KEEP OBJECTING AS COMPOUND, BUT I'M NOT SURE HE – IT SOUNDED LIKE THERE WERE THREE QUESTIONS THERE.

MR. BEERS: LET ME BREAK IT DOWN INTO ONE QUESTION.

Q THE SEGAL COMPANY USES A TWO-TIER METHOD TO VALUE THE UNFUNDED VESTED LIABILITY OF A PLAN; IS THAT CORRECT, RIGHT?

A YES.

Q WHAT IS THE IMPORTANCE OF USING THIS TWO-TIER METHOD AS OPPOSED TO USING A SINGLE INTEREST RATE ASSUMPTION TO DETERMINE THE UNFUNDED VESTED LIABILITY OF THE PLAN?

A WELL, IT DEPENDS ON WHAT THE SINGLE INTEREST [p. 244] ASSUMPTION IS. IF THE SINGLE INTEREST ASSUMPTION IS THE VALUATION ASSUMPTION, THE SEGAL TWO-TIER METHOD PRODUCES A LOWER LIABILITY AND A LOWER WITHDRAWAL LIABILITY.

AND THE REASON THAT WE CHOSE THIS METHOD WAS THAT IF YOU REALLY WANTED TO, YOU COULD TAKE THE ASSETS THAT YOU HAD AND GO OUT AND BUY ANNUITIES FOR – AS FAR AS THEY WOULD GO. SO IT SEEMED THAT CURRENT RATES ON ANNUITIES WERE A REASONABLE FIRST STEP IN EVALUATION PROCESS FOR VALUING THE UNFUNDED VESTED LIABILITIES.

AS FOR THE REST OF THE LIABILITIES, WE HAD TO MAKE SOME OTHER DECISION, AND IT SEEMED TO US THAT CURRENT INTEREST RATES, HOWEVER REPRESENTED, WERE NOT REASONABLE. YOU CAN'T SPEND MONEY YOU DON'T HAVE.

THE MOST NATURAL ALTERNATIVE, OR SOME OF THE REASONS MR. KING MENTIONED, NAMELY, THAT'S ALREADY BEEN DONE, IT'S EASY, WAS THE VALUATION INTEREST RATE. IT'S ALREADY BEEN – IT'S ALREADY THERE. YOU DON'T HAVE TO INVENT IT, YOU DON'T HAVE TO THINK ABOUT IT.

AND AS WE THOUGHT ABOUT THIS PROCESS MORE, AND WE THOUGHT ABOUT THE EFFECT OF THE EXPENSE ASSUMPTION, WHICH IS IN THE P.B.G.C. RATES AND NOT IN THE VALUATION INTEREST RATE, THAT IF WE WERE TO REFLECT THE EXPENSES, THAT WOULD INCREASE THAT RATE. [p.

245] AND WE THOUGHT ABOUT THE MORTALITY TABLE AND OUR NONCONSERVATIVE NATURE OF THE MORTALITY TABLE, AND THE FACT THAT THE EMPLOYER'S BASICALLY BEING LOANED THE MONEY DURING THE PAYOUT PERIOD AT THAT VALUATION PERIOD ASSUMPTION RATE, IN THIS CASE SIX PERCENT. ALL OF THESE REASONS SEEMED TO INDICATE THAT ANY CONSERVATISM IN THAT RATE WAS JUSTIFIABLE AND THAT WAS - THOSE WERE THE REASONS THAT WE USED IT.

THERE WAS ONE OTHER FACTOR, AND AGAIN TO USE THIS SIX PERCENT RATE OR THE CONSERVATISM IN THE SIX PERCENT RATE TO MAKE UP FOR NONCONSERVATISM IN OTHER ASSUMPTIONS, AND THAT IS THAT WHEN AN EMPLOYER WITHDRAWS FROM A PLAN, SHUTS DOWN A PLANT, VERY OFTEN HIS EMPLOYEES ARE INCLINED TO RETIRE EARLIER THAN THEY OTHERWISE WOULD HAVE DONE. IF THEY'RE NOT WORKING, THEY HAVE MORE REASON TO RETIRE EARLY. AND THAT HAS AN EFFECT BECAUSE THE EARLY RETIREMENT FACTORS IN THE PLAN ARE MORE GENEROUS TO THE EMPLOYEES THAN A STRICT ACTUARIAL EQUIVALENT.

IF WE REALLY WANTED TO GO IN AND SAY, WELL, THE EMPLOYEES OF THIS EMPLOYER ARE MORE LIKELY TO RETIRE EARLY, THEREFORE WE SHOULD USE LOWER RETIREMENT RATES. BUT THEN WE WOULD HAVE TO THINK ABOUT HOW MUCH LOWER, AND IT WOULD BE ALL - ALL A MESS.

BUT WE JUST FELT, HERE WAS YET ANOTHER [p. 246] FACTOR, IS THE FACT THAT THE EXPERIENCE OF THE WITHDRAWING EMPLOYER WERE LIKELY TO HAVE LOWER RETIREMENT AGES. THERE WAS ANOTHER FACTOR FOR ALLOWING SOME CONSERVATISM IN THE VALUATION INTEREST RATE USED FOR THE REST OF THE WITHDRAWAL LIABILITY CALCULATION.

Q BACK IN 1980 AND '81, DID THE CONSTRUCTION LABORERS PENSION TRUST FOR SOUTHERN CALIFORNIA HAVE SUFFICIENT ASSETS ON HAND TO FUND THE VESTED BENEFITS EXISTING AT THAT TIME?

A NO, NOT EVEN CLOSE. I THINK I CALCULATED THE MARKET VALUE OF ASSETS, DIVIDED BY THE P.B.G.C. LIABILITIES FOR ALL VESTED BENEFITS AS BEING 29.5 PERCENT.

Q IS THAT EVEN ENOUGH TO COVER THE THEN CURRENTLY RETIRED LIVES?

A NOT EVEN CLOSE.

Q WHAT ABOUT THE STATE OF THE FUND TODAY?

A IT'S BETTER, PARTIALLY BECAUSE THE CONTRIBUTION RATE HAS BEEN INCREASED. AND ALSO WE'VE HAD SOME FAVORABLE INVESTMENT RESULTS, AND WE'VE COLLECTED SOME WITHDRAWAL LIABILITY. BUT THE FUND ASSETS ARE STILL NOWHERE NEAR THE PENSIONER LIABILITY.

Q IS THE FACT THAT YOU HAVE TO CONSIDER IN DECIDING THE REASONABLE INVESTMENT

YIELD THAT YOU CAN [p. 247] EXPECT FROM THE FUND HAVING TO ALLOW FOR LIQUIDITY IN THE ASSETS OF THE TRUST, AND HOW DOES THAT AFFECT – FIRST OF ALL, GO AHEAD AND ANSWER THAT, YES OR NO.

A WHAT I MEAN, NEEDS FOR LIQUIDITY AFFECTS YOUR ACTUAL INVESTMENTS. IF YOU HAVE A NEGATIVE CASH FLOW, OBVIOUSLY YOU CAN'T PUT ALL YOUR MONEY OUT FOR 30-YEAR ZERO COUPON BONDS. IF YOU NEED THE MONEY FOR BENEFIT PAYMENTS, YOU CAN'T HAVE IT INVESTED SIMULTANEOUSLY IN A LONG-TERM INSTRUMENT.

Q HAS THE TRUST HERE ACTUALLY HAD A NEGATIVE CASH FLOW?

MR. NELSON: WHEN?

MR. BEERS: AT ANY TIME.

THE WITNESS: IF BY NEGATIVE CASH FLOW, YOU MEAN, AN EXCESS OF BENEFIT PAYMENTS AND EXPENSES OVER CONTRIBUTIONS –

Q BY MR. BEERS: THAT'S WHAT I MEAN.

A – THE ANSWER IS YES, THEY HAVE HAD A NEGATIVE CASH FLOW SINCE 1982 AT LEAST, AND THEY STILL DO. WITH INVESTMENT INCOME, THE FUND HAS CONTINUED TO GROW. SO IF YOU DEFINE THE NEGATIVE CASH FLOW EXCLUSIVE OF INVESTMENT RETURNS, THEY'VE HAD A NEGATIVE CASH FLOW.

Q WOULD YOU, IN YOUR PROFESSIONAL OPINION AS AN ACTUARY, CONSIDER THE ESTIMATES GIVEN BY MR. KING IN USING THE BUCK FORWARD INTEREST RATES AS A [p. 248] REASONABLE BASIS FOR DETERMINING WITHDRAWAL LIABILITY?

A NO, BECAUSE THEY DON'T REFLECT EXPENSES, AND THEN – AT ALL. AND, NO, BECAUSE THEY DON'T CONTAIN THE CONSERVATISM THAT'S NEEDED TO MAKE UP FOR LACK OF CONSERVATISM IN SOME OTHER ASSUMPTIONS THAT I'VE DISCUSSED. AND FINALLY, EVEN IF THOSE WERE GRANTED SOMEHOW, YOU COULD NOT APPLY THE BUCK FORWARD INTEREST RATES TO MONIES THAT YOU DIDN'T HAVE ON HAND.

Q IS AN IMPORTANT FACTOR IN MAKING YOUR ACTUARIAL DETERMINATIONS THE FACT THAT BENEFITS GO OUT 30, 40, 50 OR EVEN 60 YEARS?

A YES.

Q HOW DOES THAT AFFECT YOUR ASSUMPTIONS ON THE DISCOUNT RATE FOR THE UNFUNDED VESTED LIABILITY, AND WHAT KIND OF INVESTMENT WOULD BE NECESSARY TO TAKE CARE OF THAT UNFUNDED VESTED LIABILITY?

MR. NELSON: I DON'T WANT TO BE TOO PICKY.

THE ARBITRATOR: THAT'S TWO QUESTIONS.

MR. BEERS: THAT'S TWO QUESTIONS, BUT HE CAN ANSWER IT WITH A –

MR. NELSON: I'LL OBJECT DEPENDING ON WHAT I HEAR IN THE FIRST ONE.

THE WITNESS: I'LL ANSWER THE SECOND ONE FIRST. THERE ARE REALLY NO 60- OR 70-YEAR INVESTMENTS, SO [p. 249] FOR THAT SMALL PORTION OF THE LIABILITY, THEY'RE REALLY GOING TO BE PAID OUT WAY OUT THERE. YOU INVEST IN SOMETHING AND YOU'RE GOING TO REINVEST A FEW TIMES ALONG THE WAY IN ALL PROBABILITY, AND MAYBE YOU BETTER READ ME THE FIRST QUESTION AGAIN.

Q BY MR. BEERS: IS THERE ANY WAY TO GUARANTEE WHAT THE INTEREST RATE IS GOING TO BE ONE YEAR FROM NOW?

A OF COURSE – OF COURSE NOT. AN INSURANCE COMPANY SOMETIMES WILL GUARANTEE A RATE FOR NEW MONEY RECEIVED DURING A CALENDAR YEAR, USUALLY AS I UNDERSTAND IT, FOR THE REST OF THAT CALENDAR YEAR. AND THEY MAY QUOTE THAT AT THE BEGINNING OF THE YEAR AS THEIR NEW MONEY RATE. SO THAT'S ALMOST A YEAR. BUT THEY'RE ON A RISK WHEN THEY DO THAT. SO I THINK, YOU KNOW, AS FAR AS GUARANTEES, THE ANSWER IS BASICALLY NO.

Q DO YOU HAVE A FEEL FOR WHAT THE DISCOUNT RATE WOULD COME OUT TO BE IF YOU TOOK THE TWO-TIER APPROACH OF SEGAL FOR THE TRUST AND BLENDED IT TOGETHER INTO ONE RATE?

A I HAVEN'T DONE THAT CALCULATION.

Q IS THERE ONE THAT YOU COULD ROUGHLY DO IN YOUR HEAD?

A LET'S SEE –

MR. NELSON: I GUESS THE FIRST QUESTION, IS THERE [p. 250] A CALCULATION THAT YOU COULD ROUGHLY DO IN YOUR HEAD, AND THEN WHETHER YOU CAN DO IT.

THE ARBITRATOR: I THINK THE ANSWER WAS HE HADN'T DONE IT.

THE WITNESS: THERE IS A CALCULATION. HOW ACCURATELY I COULD DO IT IN MY HEAD IS AN IMPEACHABLE –

MR. BEERS: THAT PROBABLY WON'T BE NECESSARY.

Q LET ME JUST DRAW OUT SOME NUMBERS THAT WILL GIVE AN INDICATION OF WHAT THAT NOTED RATE MIGHT END UP BEING.

MR. NELSON: WAIT A MINUTE NOW.

THE ARBITRATOR: START OVER AGAIN. WITHDRAW THE QUESTION.

MR. BEERS: WITHDRAW THE QUESTION.

Q ONE PART OF THE TWO-TIER APPROACH IS TO DETERMINE THE UNFUNDED VESTED LIABILITY TO THE EXTENT CURRENT ASSETS ARE AVAILABLE TO PAY THEM; IS THAT CORRECT?

A YES.

Q HOW MUCH OF THE UNFUNDED VESTED LIABILITY CAN BE COVERED BY THE CURRENT ASSETS OF THE TRUST BACK IN '81?

A DECEMBER 31, 1980. IT WAS 29 AND A HALF PERCENT.

Q WHICH STATE THE OBVIOUS, HOW MUCH DOES THAT [p. 251] LEAVE TO BE COVERED BY FUTURE ASSETS?

A SEVENTY AND A HALF PERCENT. I THINK I CAN DO THAT WITHOUT MY CALCULATOR.

Q THEREFORE, THE P.B.G.C. RATES WOULD BE APPLIED TO THE – TO APPROXIMATELY 29 PERCENT OF THE UNFUNDED VESTED LIABILITY?

A TWENTY-NINE PERCENT OF THE VESTED LIABILITY.

Q PARDON ME, THE UNFUNDED VESTED LIABILITY?

A NOT UNFUNDED.

Q VESTED LIABILITY?

A VESTED LIABILITY.

Q THEN THE SIX PERCENT FUNDING RATE WOULD HAVE BEEN APPLIED TO THE APPROXIMATELY 71 PERCENT –

A YES.

Q – OF THE VESTED LIABILITY RELYING ON FUTURE ASSETS FOR PAYMENT?

A YES.

Q SO YOU WOULD END UP WITH AN OVERALL RATE IN EXCESS OF SIX PERCENT; IS THAT CORRECT?

A YES.

Q WHAT IS YOUR OPINION AS TO THE RATE USED BY THE MAJORITY OF PENSION FUNDS IN CALCULATING WITHDRAWAL LIABILITY FOR WITHDRAWALS THAT TOOK PLACE IN 1981?

A I WOULD PREFER TO ANSWER IT IN TERMS OF THE [p. 252] MAJORITY OF PENSION ACTUARIES. I THINK THE MAJORITY OF PENSION ACTUARIES VALUING MULTI-EMPLOYER PLANS WERE USING THE PLANS VALUATION ASSUMPTION. I TAKE THAT FROM CONVERSATIONS AT THE ANNUAL ENROLLED ACTUARIES MEETING WHERE THIS QUESTION IS ASKED EVERY YEAR AND THERE'S USUALLY A SHOW OF HANDS, AND SO I HAVE AN IMMEDIATE SENSE OF THAT.

NOW, EVERYONE WHO RAISES HIS HAND ISN'T VALUING AN EQUAL NUMBER OF PLANS, AND PARTICULARLY THE SEGAL PEOPLE HAVE MORE THAN THEIR SHARE. SO IT COULD BE THAT HALF OR MORE OF THE PLANS ARE USING EITHER THE SEGAL METHOD OR OTHER METHODS THAT USE THE CURRENT INTEREST RATES TO THE EXTENT THEY HAVE ASSETS, OR CURRENT INTEREST RATES TO THE EXTENT THAT THE WITHDRAWING EMPLOYER'S WILLING TO PAY A LUMP SUM.

ANOTHER METHOD THAT IS USED IS SO-CALLED SELECT AND ULTIMATE INTEREST RATES WHERE A PERSON ASSUMES ONE INTEREST RATE FAIRLY HIGH FOR YEAR ONE, AND THEN A LOWER RATE FOR YEAR TWO, AND A LOWER RATE FOR YEAR THREE AND SO ON, YEAR TEN THEY WOULD HAVE SOME USUALLY QUITE LOW RATE AND SOME FIRMS WOULD CALCULATE WITHDRAWAL LIABILITY USING THAT METHOD. I KNOW DAN MC GINN'S FIRM, BEFORE IT WAS BOUGHT BY MERCER, USED A METHOD LIKE THAT.

Q DO YOU KNOW OF ANY OTHER METHODS USED TO [p. 253] CALCULATE WITHDRAWAL LIABILITY?

A I WOULD REPHRASE THE QUESTION. DO I KNOW OF ANY OTHER INTEREST RATES OR METHODS OF APPLYING INTEREST RATES? I WOULD SAY I'M NOT AWARE OF ANY.

Q ONE LAST QUESTION I HAVE IS, DO YOU KNOW OF ANY FUND, ANY MULTI-EMPLOYER PENSION FUND USING RATE ASSUMPTIONS AS HIGH AS THOSE USED BY MR. KING?

MR. NELSON: I THINK I'M GOING TO OBJECT AT THIS TIME AT THIS POINT AS IRRELEVANT TO THIS LIMITED PURPOSE. TO THE EXTENT THAT HE KNOWS BASED ON WHAT MARTIN SEGAL DOES, AND THEY REPRESENT A MAJORITY OF THE FUNDS, I THINK IT MISCONVEYS THE IMPRESSION TO THE EXTENT HE'S ASKING FOR THINGS BEYOND HIS KNOWLEDGE OF WHAT MARTIN SEGAL DOES, CALLS FOR SPECULATION WITHOUT FOUNDATION.

Q BY MR. BEERS: ANSWER WITH YOUR PERSONAL KNOWLEDGE AS TO WHETHER OR NOT YOU KNOW OF ANY FUNDS THAT USE INTEREST RATES – USE THE RATES, THE SAME OR HIGHER THAN MR. KING USED IN HIS DETERMINATION OF WITHDRAWAL LIABILITY.

A I CAN'T SAY THAT I KNOW OF ANY. I TAKE MR. KING AT HIS WORD WHEN HE SAYS THAT IF BUCK HAS MULTI-EMPLOYER PLANS WITH WITHDRAWAL LIABILITY, THAT THEY USE THE METHOD. I THINK HE RESPONDED THAT THERE WERE AT MOST A SMALL NUMBER OF THOSE.

MR. BEERS: NO FURTHER QUESTIONS.

[p. 254] MR. NELSON: COULD I HAVE ABOUT SEVEN MINUTES?

THE ARBITRATOR: SURE.

MR. NELSON: MAYBE EIGHT.

THE ARBITRATOR: TAKE MORE IF YOU NEED IT.

(SHORT RECESS.)

CROSS-EXAMINATION

BY MR. NELSON:

Q ONE OF THE THINGS, MR. BATES, THAT TROUBLED YOU ABOUT MR. KING'S CALCULATIONS WERE THAT HE DID NOT ACCOUNT FOR ADMINISTRATIVE EXPENSES IN EXHIBITS 16 – COMPANY EXHIBITS 16-A AND 16-B; IS THAT CORRECT?

A THAT'S CORRECT.

Q I SUPPOSE FOR PURPOSES OF CLARITY OF THE RECORD, I'M LOOKING AT EXHIBIT "H," WHICH IS THE FINANCIAL STATEMENT FOR DECEMBER – DATED DECEMBER 31, 1981. FIRST OF ALL, DOES MARTIN SEGAL PREPARE THE FINANCIAL STATEMENTS?

A NO. THE – AS EXHIBIT "H" INDICATES ON THE BOTTOM OF PAGE 1, THEY'RE PREPARED, IN THIS CASE, BY MILLER, ARASE, KAPLAN, SHEETS AND COMPANY, CERTIFIED PUBLIC ACCOUNTANTS.

Q LET ME DIRECT YOUR ATTENTION TO PAGE 8 OF COMPANY EXHIBIT "H." DO YOU HAVE AN OPINION AS TO WHETHER THE ACTUAL RATE OF GENERAL ADMINISTRATIVE [p. 255] EXPENSES AS A PERCENTAGE OF EMPLOYER CONTRIBUTION EXCEEDED YOUR ACTUARIAL PROJECTION FOR 1981?

A FOR YEAR 1981, IT LOOKS LIKE WE WERE REASONABLY CLOSE. JUST A SECOND. WE HAD ESTIMATED ONE MILLION TWO HUNDRED THOUSAND IN 1981, AND THE ACTUAL WAS ONE MILLION 051,976, ACCORDING TO THIS STATEMENT. AND I WOULD HAVE TO LOOK AT IT IN SOME DETAIL TO MAKE SURE THAT EVERYTHING THAT WHAT WE CALL ADMINISTRATIVE EXPENSE HE DOES. BUT ASSUMING THAT TO BE THE CASE, THE EXPERIENCE THAT YEAR WAS MUCH LESS THAN WHAT WE HAD ASSUMED FOR 1981, FOR PURPOSES OF THE ONGOING VALUATION. THIS DOESN'T AFFECT THE WITHDRAWAL LIABILITY.

Q BUT WITH RESPECT TO AT LEAST 1981, AND LOOSELY DEFINING ADMINISTRATIVE EXPENSES AS WHAT IT COST TO OPERATE THE PLAN, IT DIDN'T COST AS MUCH TO OPERATE THE PLAN IN 1981 AS YOU PROJECTED IT WOULD IN YOUR ACTUARIAL EVALUATION?

A THAT'S CORRECT. I'M LOOKING TO TRY AND MAKE SURE THAT WE HAVE EXAMPLES HERE, AND BASED ON EXHIBIT "E," PAGE 13, WE DON'T.

Q WHAT'S MISSING?

A EXHIBIT "E," PAGE 13, GOING BACK ONE YEAR TO 1980, WHICH IS THE ONLY YEAR THAT'S COMMON TO BOTH, WE HAVE ADMINISTRATIVE EXPENSES ONE MILLION 103,527 IN EXHIBIT "E," BUT WE HAVE ONLY 8,088 FOR [p. 256] THE SAME YEAR IN EXHIBIT "H." SO I WOULD HAVE TO LOOK A LITTLE BIT TO SEE WHAT THE REASON FOR THAT WAS. IT MAY BE THAT SOME KINDS OF FEES ARE CONSIDERED ADMINISTRATIVE EXPENSES FOR ONE PURPOSE AND NOT FOR ANOTHER. I DON'T KNOW.

Q LET'S GO ON TO SOMETHING MAYBE A LITTLE BIT MORE GENERAL THEN.

A PROBABLY THAT I WOULD CALL CORPORATE COMPANY TRUSTEE FEE, THAT'S A BANK CHARGE. THEY HOLD THE MONEY AND WRITE THE CHECKS AND SO ON, AND SOMETIMES THAT FEE IS CONSIDERED TO BE ADMINISTRATIVE BECAUSE THEY'RE WRITING THE CHECKS AND PAYING THE POSTAGE AND ALL THAT. SOMETIMES IT'S CONSIDERED

INVESTMENT BECAUSE THEY ALSO HOLD THE MONEY.

Q I THINK YOU SAID THAT THE TRUST FUND HAS BEEN EXPERIENCING A NEGATIVE CASH FLOW SINCE 1982.

MR. BEERS: OF COURSE AS HE DEFINED CASH FLOW.

THE WITNESS: YEAH, I DEFINED – I SAID IF YOU DEFINE CASH FLOW AS I DID, WHICH IS CONTRIBUTION INCOME MINUS BENEFIT PAYMENTS AND EXPENSES, THERE WAS A NEGATIVE CASH FLOW. INVESTMENT INCOME MADE THE FUND CONTINUE TO GROW.

Q BY MR. NELSON: LET ME DEFINE CASH FLOW A LITTLE BIT DIFFERENTLY.

WITH RESPECT TO THE PERIOD, THE YEAR 1982 THAT I THINK WE WERE JUST DISCUSSING, THERE WAS MORE [p. 257] MONEY IN THE FUND AT THE END OF THE YEAR THAN THERE WAS IN THE BEGINNING; WOULD THAT BE CORRECT?

A I THINK THE FUND ASSETS HAVE GONE UP EVERY YEAR.

Q WOULD THAT NECESSARILY MEAN THAT IRRESPECTIVE OF THE SOURCE OF THE INCOME, WHATEVER SOURCE THAT MIGHT BE, WHETHER IT'S CONTRIBUTIONS OR INVESTMENT PERFORMANCE, THE FUND IS EARNING OR OBTAINING MORE FUNDS AS ASSETS THAN IT'S PAYING OUT ON BENEFITS ON AN ANNUALIZED BASIS?

A YES. IF YOU INCLUDE INVESTMENT INCOME, THE FUND HAS CONTINUED TO GROW, EXCEPT CALENDAR YEAR 1975 I SEE IT WENT DOWN. AND '74. LOOKING AT EXHIBIT "F,", PAGE 21.

Q I THINK YOU ALSO TESTIFIED THAT FOR PURPOSES OF AT LEAST 1982 AND MAYBE THE OTHER YEARS AFTERWARDS, THAT IT'S THE INVESTMENT PERFORMANCE THAT'S – FOR PURPOSES OF AT LEAST 1982, THE INCREASE IN THE ASSETS OF THE TRUST FUND IS ATTRIBUTABLE DIRECTLY TO THE IMPROVED INVESTMENT PERFORMANCE AS OPPOSED TO CONTRIBUTION INCREASES.

A THAT'S CORRECT.

Q DOESN'T THAT NECESSARILY MEAN THAT THE THE FUND'S ACTUAL INVESTMENT PERFORMANCE IS EXCEEDING YOUR ACTUARIAL PROJECTION FOR THAT PERFORMANCE?

A ON AVERAGE, YES, FOR THAT YEAR.

[p. 258] Q. WOULD IT ALSO MEAN –

A WHEN I SAY ON AVERAGE, I MEAN, ON AVERAGE OF THE FIVE INTEREST RATES THAT ARE USED IN THIS WITHDRAWAL LIABILITY CALCULATION.

Q THE INVESTMENT INCOME THAT IS CAUSING THE INCREASE IN THE FUND IS BASED UPON THE ASSETS THAT YOU'RE ACCRUING FROM – YOU'RE OBTAINING FROM YEAR TO YEAR INTO THE FUTURE PAST 1982, ISN'T IT?

A THE INVESTMENT INCOME IS BASED ON THE INVESTMENTS OF THE ASSETS. I'M NOT SURE I SEE THE POINT OF THE QUESTION.

Q YOUR ACTUARIAL REVIEW PROJECTS TO A CERTAIN EXTENT WHAT THE GROWTH IN THOSE ASSETS AND THE INTEREST THAT WILL BE EARNED ON THOSE ASSETS IN FUTURE YEARS WILL BE?

A WELL, ACTUALLY IT DOESN'T DIRECTLY. WE DISCOUNT THINGS TO THE PRESENT, SO WE DON'T PROJECT ASSETS OUT. WE DISCOUNT LIABILITIES BACK.

Q YOU MENTIONED EARLIER THAT YOU COULD NOT DETERMINE WITH ANY DEGREE OF CERTAINTY WHAT INTEREST RATES WOULD BE FROM ONE YEAR TO THE NEXT ON ANY GIVEN ASSETS THAT YOU HAD ON THE PRESENT –

A MY RESPONSE WAS, I BELIEVE, NOT WITH RESPECT TO ANY PARTICULAR CLASS OF ASSETS, BUT ON A MORE GENERIC QUESTION ABOUT WHAT INTEREST RATES WOULD BE IN THE FUTURE. THAT WAS HOW I UNDERSTOOD THE [p. 259] QUESTION, AND THAT WAS THE BASIS OF MY ANSWER. OF COURSE THERE ARE INSURANCE CONTRACTS THAT PROVIDE "X" INTEREST THIS YEAR, "Y" INTEREST NEXT YEAR AND "Z" INTEREST THE YEAR AFTER FOR A FIXED PERIOD, FOR ASSETS THAT ARE INVESTED THAT –

Q AND SOME OF THOSE KINDS ARE, I GUESS, A FORM OF ANNUITY CONTRACT, AREN'T THEY?

A GENERALLY CALLED GUARANTEED INTEREST CONTRACTS, G.I.C.'S.

Q THOSE GUARANTEED INTEREST CONTRACTS WOULD BE NEGOTIATED, I THINK YOU SAID, AT LEAST COULD BE NEGOTIATED AT THE BEGINNING OF THE YEAR, AND WOULD COVER ALL CONTRIBUTIONS COMING IN DURING THAT 12-MONTH PERIOD?

A I'M NOT AN EXPERT ON HOW THESE THINGS WORK. I'VE HEARD OF SUCH CONTRACTS AND I KNOW THEY EXIST. BUT I'M FAR FROM AN EXPERT ON HOW INSURANCE COMPANY INVESTMENT PRODUCTS WORK.

Q ARE YOU FAMILIAR WITH WHAT DURATION THOSE GUARANTEED INVESTMENT CONTRACTS WOULD RUN ON THE ONE-YEAR CONTRIBUTIONS?

A ONE USUALLY SEES QUOTES FOR ONE YEAR, THREE, FIVE AND SEVEN YEARS. IT SEEMS TO BE NUMBERS THAT I SEE INCLUDED IN CHARTS THAT CROSS MY DESK.

Q IF YOU HAD ONE OF THOSE GUARANTEED INVESTMENT CONTRACTS THAT HAD A TERM OF FIVE YEARS, [p. 260] YOU COULD DETERMINE WHAT INTEREST RATE WOULD BE PAID ON MONEY THAT YOU DID NOT HAVE IN HAND YET OVER THE NEXT FIVE-YEAR PERIOD, COULD YOU NOT?

A FOR THE TYPICAL CONTRACT, NO. THE TYPICAL CONTRACT, YOU HAVE TO PUT ALL THE MONEY IN UP FRONT. SOME OF THESE CONTRACTS WILL ALLOW YOU TO PUT MONIES IN OVER A

PERIOD, BUT THEN THE GUARANTEES ARE MUCH WORSE, BECAUSE OBVIOUSLY THEY'RE LEAVING THEMSELVES OPEN TO ANTISELECTION, IF THEY'RE GUARANTEEING YOU A RATE OF 12 PERCENT OR WHATEVER FOR THE FIRST YEAR, THAT - LET'S SAY THEY'RE GUARANTEEING YOU A HIGH RATE TO ATTRACT THE MONEY FOR THE FIRST YEAR, THEY'RE LIKELY TO GUARANTEE THAT FOR A LESS - FOR A SHORTER PERIOD BECAUSE THEY RUN THE RISK THAT YOU'LL PUT THE MONEY IN IF IT'S FAVORABLE TO YOU, AND YOU WON'T PUT THE MONEY IN IF IT'S NOT FAVORABLE TO YOU.

Q EVEN IF IT'S AT A LESS FAVORABLE RATE, THOSE COMPANIES WHICH OFFER THE LONGER DURATION CONTRACTS BASED UPON FUTURE CONTRIBUTIONS WOULD GUARANTEE THE INTEREST RATE FOR A PERIOD OF TIME IN THE FUTURE UP TO FIVE YEARS?

A MY UNDERSTANDING OF THOSE KINDS OF CONTRACTS IS THAT THE WINDOW FOR GUARANTEEING ANYTHING ON NEW MONEY IS VERY SHORT, AND IT EXTENDS NO FURTHER THAN THE END OF THE CURRENT YEAR. THAT'S THE NORMAL CONTRACT - THE MOST NORMAL CONTRACT IS TO PUT ALL [p. 261] THE MONEY UP FRONT, AND SOME YOU CAN PUT MONIES IN UP TO THE END OF SOME FIXED PERIOD. AND THERE'S OFTEN LIMITS ON HOW MUCH YOU CAN PUT IN AS WELL, BECAUSE THEY WANT TO LIMIT THEIR RISK.

Q THERE WAS SOME CONCERN EXPRESSED ABOUT MAINTAINING THE TRUST FUND'S LIQUIDITY REQUIREMENTS. YOU DID NOT EXPRESS AN

OPINION THAT USING, SAY, THE BUCK FORWARD INTEREST RATES WOULD PRECLUDE THE FUND FROM SATISFYING ITS LIQUIDITY REQUIREMENTS, DID YOU?

A MY UNDERSTANDING OF THE USE OF THE BUCK FORWARD INTEREST RATES IS A METHOD OF CALCULATING LIABILITIES, WHICH DOESN'T HAVE ANYTHING TO DO WITH LIQUIDITY OR MONIES GOING IN AND OUT OF THE FUND.

Q TO THE EXTENT THAT THE MONEY ON HAND WAS USED TO PURCHASE GOVERNMENT SECURITIES, THAT WOULDN'T ADVERSELY AFFECT, THEN, THE LIQUIDITY OF THE TRUST FUND?

A WELL, MAYBE I MISUNDERSTAND THE QUESTION.

TO GO TO THE EXTREME CASE FIRST AND THEN BACK OFF IF WE NEED TO, IF THE FUND DECIDED THAT IT WANTED TO PUT ALL OF ITS MONEY INTO A 30-YEAR ZERO COUPON BOND, THAT MEANS YOU PUT ALL THE MONEY IN TODAY AND YOU GET IT BACK 30 YEARS LATER, NOTHING HAPPENS IN BETWEEN. THE FUND COULDN'T DO THAT. IT HAS LIQUIDITY NEEDS THAT WOULD PREVENT IT FROM DOING THAT. IT HAS TO GET SOME OF THAT INVESTMENT INCOME [p. 262] TO USE FOR BENEFIT PAYMENTS BECAUSE BENEFIT PAYMENTS EXCEED NET CONTRIBUTIONS.

Q GOVERNMENT OBLIGATIONS, T-BILLS, BONDS AND THE LIKE, WOULD COME IN INVESTMENT PERIODS FROM 30 DAYS TO 30 YEARS, WOULD THEY NOT?

A SUCH INVESTMENTS ARE AVAILABLE.

Q SO JUST BECAUSE THE TRUST FUND WAS USING GOVERNMENT SECURITIES WOULD NOT NECESSARILY PRECLUDE IT FROM SELECTING A SPREAD OF SECURITIES THAT WOULD SATISFY ITS LIQUIDITY REQUIREMENTS?

A THAT'S CORRECT.

(BRIEF PAUSE.)

Q BY MR. NELSON: MR. BEERS ASKED YOU A SERIES OF QUESTIONS ABOUT WHAT THE MAJORITY OF OTHER ACTUARIES OR OTHER PLANS WERE DOING WITH RESPECT TO VARIOUS ACTUARIAL ASSUMPTIONS. I THINK, IF I RECALL IT CORRECTLY, IT WAS SOMEWHAT NARROWED TO MULTI-EMPLOYER PLANS.

A WITH RESPECT TO WITHDRAWAL LIABILITY, THAT WOULDN'T NARROW ANYTHING.

Q I THINK YOU ALSO MENTIONED – I GUESS I'LL JUST GET STRAIGHT TO THE POINT. WHEN WE TALK ABOUT WHAT THE MAJORITY OF OTHER ACTUARIES ARE DOING WITH RESPECT TO WITHDRAWAL LIABILITY AND MULTI-EMPLOYER PENSION PLANS, AREN'T WE REALLY TALKING ABOUT WHAT MARTIN SEGAL IS DOING?

[p. 263] A WELL, WHEN I SAY OTHER ACTUARIES, I MEAN, NONSEGAL ACTUARIES. I THINK WE'VE ESTABLISHED WHAT SEGAL ACTUARIES ARE DOING. SO WHEN I SAY OTHER ACTUARIES, I DON'T MEAN OTHER THAN ME, I MEAN OTHER THAN SEGAL.

Q WHEN YOU SPEAK, HOWEVER, OF WHAT THE MAJORITY OF ACTUARIES ARE DOING, ARE YOU EXCLUDING WHAT THE SEGAL ACTUARIES ARE DOING?

MR. BEERS: ARE YOU SPEAKING IN THE ABSTRACT OR –

MR. NELSON: IN THE GENERAL.

MR. BEERS: IT MIGHT VARY ACCORDING TO THE CONTEXT, I DON'T KNOW.

THE WITNESS: MY SENSE IS THAT THE MAJORITY OF ACTUARIES WHO SIGN OFF ON WITHDRAWAL LIABILITY CALCULATIONS ARE USING THE PLAN'S INVESTMENT RETURN ASSUMPTION TO CALCULATE WITHDRAWAL LIABILITY.

Q BY MR. NELSON: I GUESS WHAT I'M TRYING TO GET AT –

A INCLUDING SEGAL.

Q – IS WHETHER GIVEN THE MARKET SHARE THAT SEGAL'S GOT, WHETHER THERE IS REALLY ANY ADDITIONAL MEANING TO THE TERM WHAT A MAJORITY OF THE ACTUARIES ARE DOING. I'M TRYING TO DETERMINE WHETHER THERE'S ANY PRACTICAL DIFFERENCE BETWEEN A DESCRIPTION, MAJORITY OF ACTUARIES AND WHAT MARTIN SEGAL IS [p. 264] DOING. ARE THOSE TWO TERMS SYNONYMOUS?

A NO, THEY'RE NOT SYNONYMOUS. AS I INDICATED, I BELIEVE WE HAVE 25 TO 30 PERCENT OF THE MULTI-EMPLOYER MARKET, AND THAT WOULD

LEAVE A MAJORITY OF PLANS, AND PROBABLY A LARGER MAJORITY OF ACTUARIES, TO BE NONSEGAL PEOPLE.

Q ARE YOU FAMILIAR WITH THE CONCEPT REFERRED TO AS BOND DEDICATION, AS THAT TERMS IS APPLIED TO PENSION PLANS?

A YES.

Q COULD YOU DESCRIBE WHAT THAT IS?

A WELL, THE IDEA OF DEDICATING BONDS IS TO TRY TO SELECT BONDS WHOSE COUPON YIELDS AND REDEMPTION VALUES, AS THEY ARE RECEIVED BY THE FUND, WILL MATCH THE BENEFIT PAYMENTS AND EXPENSES PAID BY THE FUND. USUALLY THIS IS DONE FOR AN IDENTIFIED GROUP OF PARTICIPANTS, SUCH AS THE PENSIONERS ON THE ROLLS. OF COURSE, YOU CAN'T DEDICATE MORE THAN YOU'VE GOT, SO YOU COULDN'T DEDICATE MORE THAN THE ASSETS YOU HAVE INVESTED USUALLY IN BONDS.

Q APPLYING THAT BOND DEDICATION CONCEPT THAT YOU JUST DESCRIBED TO THIS PARTICULAR PENSION PLAN AS IT EXISTED IN DECEMBER 1980, WHAT IS YOUR ESTIMATE OF PLANS ASSETS REQUIRED ON HAND TO COVER THE PRESENT VALUE OF VESTED BENEFITS?

A I DON'T THINK THAT HAS TO DO WITH DEDICATED [p. 265] BONDS. I MEAN, THAT'S THE VESTED LIABILITY CALCULATIONS THAT WE'VE – THAT WE'VE INDICATED. IF YOU'RE SAYING WHAT AMOUNT OF MONEY INVESTED IN BONDS WOULD

WE HAVE TO HAVE TO PAY OFF ALL THE LIABILITIES – IS THAT WHAT YOU'RE ASKING?

Q LET ME ASK IT THIS WAY: DO YOU THINK THE AMOUNT OF BONDS THAT YOU'D HAVE TO HAVE ON HAND DEDICATED WOULD BE EQUAL TO, LESS THAN, OR GREATER THAN MR. KING'S CALCULATION FOR THE PRESENT VALUE OF VESTED BENEFIT USING THE BUCK FORWARD RATE?

A HIS METHOD WOULD PRODUCE A VERY LOW LIABILITY, AND HENCE A LOW AMOUNT OF BONDS REQUIRED, AND FOR THE REASONS I INDICATED. I THINK YOU WOULD NEED MORE MONEY THAN THAT, HOWEVER YOU INVESTED IT.

THERE'S A FURTHER POINT, OF COURSE, THAT YOU CAN'T GET DEDICATED BONDS THAT GO OUT MORE THAN 30 YEARS, AND SOME OF YOUR LIABILITIES GO WELL BEYOND THAT. SO THERE'S A PRACTICAL LIMIT HOW ACCURATE ANY KIND OF DEDICATION COULD BE, EVEN IF YOU HAD ALL THE MONEY.

Q WHAT PERCENTAGE OF THE FUND LIABILITY WOULD YOU PROJECT WOULD EXCEED 30 YEARS?

A I HAVEN'T THOUGHT OF IT IN THOSE TERMS. I WOULD JUST, OFF THE SEAT OF THE PANTS, I WOULD SAY 20 TO 30 PERCENT OF THE LIABILITIES.

Q WOULD EXCEED A 30-YEAR COMMITMENT?

[p. 266] A POSSIBLY. SOME OF THE CURRENT PENSIONERS WILL EVEN LIVE BEYOND 30 YEARS. SO PEOPLE WHO ARE NOT RETIRED WILL LIVE BEYOND

30 YEARS. MAYBE THAT'S TOO HIGH. MAYBE IT SHOULD BE 10 OR 15. I HAVEN'T THOUGHT ABOUT IT.

Q YOU MENTIONED TWO TRUST FUNDS THAT YOU ARE AWARE OF THAT DIFFERENTIATED BETWEEN MONEY ON HAND AND MONEY THEY HAD NOT YET RECEIVED FOR FUNDING PURPOSES, I THINK?

A YES.

Q THAT WAS SOUTHERN CALIFORNIA CARPENTERS TRUST FUND AND THE NATIONAL BAKERY AND CONFECTIONARY WORKERS.

A YES.

Q YOU SAID THE NATIONAL BAKERY AND CONFECTIONARY WORKERS WERE HANDLED THROUGH THE NEW YORK OFFICE. I PRESUME THAT'S THE NEW YORK OFFICE OF MARTIN SEGAL?

A THAT'S CORRECT.

Q DOES MARTIN SEGAL ALSO DO THE WORK FOR SOUTHERN CALIFORNIA CARPENTERS?

A YES, I DO IT.

(BRIEF PAUSE.)

Q BY MR. NELSON: WITH RESPECT TO THE OVERALL CONCEPT OF WITHDRAWAL LIABILITY AS IT APPLIES TO THIS PARTICULAR PLAN, I BELIEVE THERE'S A REFERENCE IN ONE [p. 267] OF THE DOCUMENTS IN JOINT EXHIBIT 7, I THINK IT WAS 7-D, THAT THERE HAD BEEN APPROXIMATELY 47 EMPLOYERS THAT HAD WITHDRAWN AS OF THE

DATE OF THAT REPORT. I'M SORRY, 43. I'M REFERRING YOU TO PAGE 9 OF THE REPORT, WHICH IS EXHIBIT -B – JOINT EXHIBIT 7-B. I GUESS FIRST LET ME DIRECT YOUR ATTENTION TO THAT EXHIBIT.

A YES.

Q THERE WERE ORIGINALLY 43 WITHDRAWING EMPLOYERS REFLECTED IN THE REPORT, OF WHOM SIX ELECTED TO RE-SIGN LABOR AGREEMENTS?

A THAT'S WHAT THIS FIRST PARAGRAPH SAYS.

Q AS I UNDERSTAND WHAT TRANSPIRED IN THOSE TRANSACTIONS IS THEY DECIDED, THOSE SIX WHO CAME BACK IN, DECIDED TO WITHDRAW, GOT THEIR WITHDRAWAL LIABILITY NOTICE AND DECIDED RE-SIGN LABOR AGREEMENTS, IS THAT YOUR UNDERSTANDING?

A YES. BY THE WAY, THIS JOINT EXHIBIT ONLY HAS ODD-NUMBERED PAGES. ALL THE EVEN-NUMBERED PAGES ARE MISSING.

MR. BEERS: HAS YOUR HONOR GOT BOTH SIDES?

THE ARBITRATOR: PAGE 8 IS MISSING.

MR. BEERS: YOUR HONOR, WHAT I'LL DO IS I'LL SWAP MY COPIES. THE PHOTOCOPY DEPARTMENT THAT COPIED THEM MUST HAVE COPIED DOUBLE-SIDED, ONLY ONE SIDE.

THE ARBITRATOR: GOES FROM 7, 9, 11.

[p. 268] MR. BEERS: I'LL MAKE SURE YOU GET BOTH SIDES OF THE PAGES. IN FACT, WHAT I'LL

DO, JUST TO MAKE SURE EVERYBODY GETS COPIES, I'LL TAKE THIS BACK TO MY OFFICE, GET A NEW JOINT EXHIBIT, AND DISTRIBUTE IT TO EVERYBODY.

THE ARBITRATOR: MR. BEERS, 10 IS MISSING, BECAUSE YOU LOOK AT PAGE 9 AT THE TOP OF THE PAGE –

MR. BEERS: I HAVE THE ORIGINALS THAT THE COPIES WERE MADE FROM, AND WHAT IT IS IS TWO-SIDED PAPER AND THE PHOTOCOPY DEPARTMENT JUST RAN IT THROUGH AS ONE SIDE.

THE WITNESS: SAME REMARK APPLIES TO EXHIBIT "E."

MR. BEERS: WE'LL HAVE THEM ALL.

THE WITNESS: SORRY.

MR. NELSON: WHERE WERE WE? OKAY.

Q FROM THAT PARTICULAR REFERENCE TO THE SIX EMPLOYERS WHO GOT THEIR WITHDRAWAL LIABILITY NOTICE AND ELECTED TO RE-SIGN LABOR AGREEMENTS, WE CAN CONCLUDE THAT THE WITHDRAWAL LIABILITY NOTICE PLAYED SOME ROLE IN THEIR DECISION TO RE-SIGN THE LABOR AGREEMENT?

A YOU MAY DRAW THAT CONCLUSION. I HAVE NO PARTICULAR KNOWLEDGE OF THEIR CIRCUMSTANCES.

Q WITH RESPECT TO THE NUMBER OF EMPLOYERS IN A MULTI-EMPLOYER PENSION BENEFIT PLAN WHICH HAS [p. 269] WITHDRAWAL LIABILITY, IS IT GENERALLY IN THE INTEREST OF EACH

EMPLOYER TO HAVE AS MANY EMPLOYERS IN THE PLAN AS POSSIBLE?

A GENERALLY IT'S FAVORABLE TO ONGOING EMPLOYERS TO HAVE OTHER EMPLOYERS IN THE PLAN IF THE PLAN HAS UNFUNDED VESTED BENEFITS, YES.

Q THE MORE EMPLOYERS THAT WERE PARTICIPATING IN THE PLANS, THE LOWER THE INDIVIDUAL WITHDRAWAL LIABILITY WOULD PRESUMABLY BE, ASSUMING THAT HOURS WORKED AND CONTRIBUTIONS WERE MADE PROPORTIONAL?

A WELL, I WOULD PUT IT THIS WAY: THE MORE EMPLOYERS THERE WERE, THE LARGER THE EMPLOYMENT BASE WOULD BE, THE MORE CONTRIBUTIONS WOULD BE RECEIVED BY THE PLAN, AND, THUS, THE SOONER THE SPECTER OF WITHDRAWAL LIABILITY WOULD BE REMOVED FROM THE PLAN, AS THEY WOULD PAY OFF THEIR WITHDRAWAL LIABILITIES.

Q YOU'RE BASED IN SOUTHERN CALIFORNIA?

A YES.

Q WITH RESPECT TO THE MULTI-EMPLOYER PENSION PLANS THAT YOU REPRESENT OR WORK WITH, HOW MANY OF THOSE HAVE WITHDRAWAL LIABILITY?

A TEN OR ELEVEN, AT LAST COUNT.

Q HOW MANY PLANS TOTAL DO YOU REPRESENT OR WORK WITH?

A EIGHTY MULTI-EMPLOYER PLANS.

Q AMONG THOSE 10 OR 11 THAT HAVE WITHDRAWAL [p. 270] LIABILITY, WOULD THOSE 10 OR 11 INCLUDE THE SOUTHERN CALIFORNIA CARPENTERS PLAN?

A YES.

Q DO YOU KNOW WHETHER THE NATIONAL BAKERY AND CONFECTIONARY WORKERS PLAN HAS WITHDRAWAL LIABILITY?

A I DON'T KNOW WHETHER IT DOES OR NOT. LET ME MAKE SURE I DIDN'T MISSTATE THE ANSWER TO A QUESTION. YOU ASKED ME A PARTICULAR QUESTION ABOUT SOUTHERN CALIFORNIA CARPENTERS. WHAT WAS THAT QUESTION? WAS THAT – THE QUESTION WAS, WAS IT AMONG THE TEN OR WAS IT AMONG THE 80?

Q AMONG THE TEN THAT HAVE WITHDRAWAL LIABILITY.

A I'M SORRY, I MISSPOKE IN THAT CASE. IT IS NOT. IT USED TO BE.

Q DID IT HAVE WITHDRAWAL LIABILITY IN 1980?

A YES.

Q THIS PARTICULAR PLAN HAD A BENEFIT INCREASE IN, I BELIEVE, MAY OF 1979? WELL, LET ME ASK YOU THE QUESTION. DID THIS PARTICULAR PLAN HAVE A BENEFIT INCREASE IN 1979?

A WE LIST IN THE APPENDIX TO EACH ANNUAL ACTUARIAL EVALUATION THE HISTORY OF THE BENEFIT LEVELS, AND I DON'T SEE ONE FOR MAY OF 1979.

Q WAS THERE ONE IN 1979? WAS THERE BENEFIT INCREASE IN 1979?

[p. 271] A NO. ACCORDING TO THIS DOCUMENT, WHICH WE PREPARED.

Q THERE WAS, HOWEVER, BENEFIT INCREASE IN 1980?

A CORRECT, JULY 1.

Q THAT BENEFIT INCREASE TOOK THE PENSION CREDIT FROM $3.40 AN HOUR – $3.40 A CREDIT TO $35.54 A CREDIT?

A FROM $32.40.

Q TO $35.64 A CREDIT?

A CORRECT. FOR THE VAST MAJORITY OF PEOPLE.

Q I TAKE IT THIS PARTICULAR PLAN HAD WITHDRAWAL LIABILITY BEFORE THAT BENEFIT INCREASE?

A NO, BECAUSE THE MEPA [SIC] HAD NOT BEEN PASSED. MEPA [SIC] WAS PASSED IN SEPTEMBER OF 1980.

Q DID THE PRESENT VALUE OF VESTED BENEFITS EXCEED THE VALUE OF ASSETS DURING 1979?

A YES.

Q WHAT IMPACT DID THE BENEFIT INCREASE HAVE UPON THAT PARTICULAR FUNDING SITUATION?

A IT RAISED THE AMOUNT OF UNFUNDED VESTED BENEFITS.

Q DO YOU KNOW BY WHAT PERCENTAGE?

A NO. I'M JUST ON THE SAME PAGE, I WOULD REMARK THAT THEY INCREASED THE CONTRIBUTION RATE BY 35 CENTS AN HOUR AT THE SAME TIME. IT NO DOUBT WAS A [p. 272] QUID PRO QUO IN THE BARGAIN.

Q DO YOU KNOW WHETHER THAT 35 CENT AN HOUR CONTRIBUTION INCREASE WOULD HAVE PAID FOR THE $3.24 PENSION CREDIT INCREASE?

A BASED ON THIS EXHIBIT "E," I THINK THE ANSWER IS YES. WHEREBY PAY FOR, YOU MEAN, PROVIDES FOR THE ADDITIONAL NORMAL COST PLUS AN AMORTIZATION PAYMENT FOR THE ADDITIONAL ACCRUED LIABILITY.

Q WHAT I'M ASKING IS, TO THE EXTENT THERE'S A GAP BETWEEN FUNDING AND BENEFITS, PRIOR TO THE BENEFIT INCREASE AND THE CONTRIBUTION INCREASE, DID THAT GAP WIDEN AFTER THE BENEFIT INCREASE AND THE CONTRIBUTION INCREASE?

A IT WIDENED ON THE DATE THAT THE BENEFITS WERE INCREASED. IT WIDENED ON JULY 1ST OF 1980.

Q BUT YOU CAN'T EXPRESS AS A PERCENTAGE ESTIMATE HOW MUCH THAT GAP INCREASED?

A GIVEN SOME TIME I COULD COME UP WITH SOMETHING. IT WAS A TEN PERCENT INCREASE IN BENEFITS FOR THE VAST MAJORITY OF SERVICE, SO THE PRESENT VALUE OF VESTED BENEFITS WOULD INCREASE APPROXIMATELY TEN PERCENT. THE ASSETS ON THAT DAY WOULD NOT INCREASE AT ALL, SO THE UNFUNDED, WHICH IS A DIFFERENCE BETWEEN THE LIABILITY AND THE ASSETS, WOULD INCREASE BY MORE THAN TEN PERCENT.

(BRIEF PAUSE.)

[p. 273] MR. NELSON: I HAVE NOTHING FURTHER.

MR. BEERS: NO FURTHER QUESTIONS.

THE ARBITRATOR: YOU HAVE SOME QUESTIONS?

MR. BEERS: NO, NO QUESTIONS.

THE ARBITRATOR: THANK YOU VERY MUCH. YOU'RE EXCUSED.

ANY FURTHER WITNESSES, MR. BEERS?

MR. BEERS: NO.

THE ARBITRATOR: OFF THE RECORD FOR A MOMENT.

* * *

(Jurat Omitted In Printing)

Exhibit 15

BUCK CONSULTANTS GM 87-70

Employee Benefit and Welfare Plans
General

Date: December 14, 1987

TO: DISTRIBUTION LISTS 1-5

FROM: R. C. MURPHY

RE: 1. BUCK FORWARD INTEREST RATE INDEX – INTEREST RATE EQUIVALENT TO THE FORWARD RATES IN THE U.S. GOVERNMENT BOND MARKET – 1/1/79 – 12/1/87

2. INTEREST RATE EQUIVALENT TO THE PBGC PLAN TERMINATION ANNUITY RATES – 6/1/78 – 12/31/87

Table 1 gives the interest rate which is equivalent to the forward rates in the U.S. Government bond market.

Table 2 gives the interest rate which is equivalent to the PBGC plan termination annuity rates.

RCM:AC

(Please store in Volume 3 of the GM – Orange Notebook in Section 18. Key Indicators and Subsection B. Please destroy Bulletin GM 87- 45.)

TABLE 1

BUCK FORWARD INTEREST RATE INDEX –
INTEREST RATE EQUIVALENT TO
THE FORWARD RATES IN THE U.S. GOVERNMENT BOND MARKET*

Date	Equivalent Rate for			Forward Rate in Year				
	Composite**	Retireds***	Actives****	1	5	10	15	20
1-1-79	9.1%	9.3%	9.0%	10.8%	9.1%	9.1%	8.9%	8.4%
2-1-79	9.1	9.2	9.0	10.4	9.0	9.0	8.9	8.6
3-1-79	9.3	9.5	9.2	10.6	9.3	9.3	9.2	8.8
4-1-79	9.3	9.4	9.2	10.3	9.1	9.2	9.1	8.8
5-1-79	9.6	9.7	9.5	10.7	9.5	9.4	9.2	9.2
6-1-79	9.3	9.4	9.3	10.2	9.0	9.5	9.6	8.7
7-1-79	9.0	9.0	9.0	9.5	8.8	9.4	9.3	8.4
8-1-79	9.2	9.3	9.2	10.0	9.1	9.3	9.3	8.8
9-1-79	9.3	9.5	9.2	10.9	9.2	9.2	9.2	8.6
10-1-79	9.5	9.7	9.3	11.2	9.3	9.7	9.3	7.9
11-1-79	10.6	11.1	10.2	13.4	10.4	10.5	10.1	8.5
12-1-79	10.5	10.8	10.2	12.4	10.6	10.6	9.8	8.8
1-1-80	10.3	10.7	10.2	12.2	10.1	10.8	10.3	8.4
2-1-80	11.5	11.7	11.4	12.8	11.5	11.8	11.1	10.6

Date	Equivalent Rate for			Forward Rate in Year				
	Composite**	Retireds***	Actives****	1	5	10	15	20
3-1-80	13.1	13.7	12.5	16.9	12.1	12.6	11.8	10.6
4-1-80	12.9	13.4	12.4	16.9	12.0	13.3	13.4	8.6
5-1-80	11.3	11.3	11.3	11.6	11.2	11.9	11.6	10.8
6-1-80	10.8	10.6	11.0	9.2	11.2	11.5	11.5	10.6
7-1-80	10.5	10.4	10.6	8.9	10.8	11.3	11.1	9.4
8-1-80	11.2	11.1	11.4	9.8	11.3	12.1	12.3	10.3
9-1-80	11.9	12.1	11.7	12.0	12.6	11.7	12.6	9.3
10-1-80	12.4	12.5	12.4	12.9	11.9	13.0	12.8	10.9
11-1-80	12.8	13.1	12.5	14.4	12.8	12.6	12.8	10.5
12-1-80	12.8	13.2	12.3	15.7	12.2	12.6	12.6	9.7
1-1-81	12.4	12.8	12.0	14.3	12.4	12.6	12.0	9.3
2-1-81	12.7	13.1	12.3	14.8	12.7	12.9	12.5	9.2
3-1-81	13.4	14.0	12.8	15.2	13.8	13.3	12.5	9.5
4-1-81	13.3	13.7	12.8	13.9	13.6	13.4	12.3	10.3
5-1-81	14.2	14.8	13.6	16.3	14.5	14.0	13.0	10.6
6-1-81	13.5	14.1	12.9	15.9	13.3	13.5	12.9	9.2
7-1-81	13.9	14.5	13.3	15.7	14.1	13.8	12.9	9.9
8-1-81	14.6	15.4	13.8	17.5	14.7	14.7	13.0	9.5
9-1-81	15.4	16.3	14.5	18.3	15.9	15.5	14.2	9.3
10-1-81	16.0	16.6	15.3	17.8	15.5	18.1	16.0	9.1

Date	Equivalent Rate for			Forward Rate in Year				
	Composite**	Retireds***	Actives****	1	5	10	15	20
11-1-81	15.0	15.4	14.5	15.4	15.3	15.8	14.8	9.7
12-1-81	13.5	13.6	13.3	12.4	13.9	13.7	13.5	11.0
1/1/82	14.4	14.6	14.1	14.2	14.5	14.3	14.6	10.6
2/1/82	14.6	14.9	14.2	14.9	14.5	15.2	14.7	10.0
3/1/82	14.4	14.7	14.0	15.0	14.1	15.1	14.3	10.2
4/1/82	14.4	14.8	13.9	15.1	14.6	13.8	13.9	11.2
5/1/82	14.0	14.4	13.6	14.5	13.9	13.5	13.6	10.9
6/1/82	14.0	14.3	13.7	13.8	14.3	13.7	14.0	10.8
7/1/82	14.7	15.1	14.3	15.3	15.0	13.8	15.0	11.0
8/1/82	14.0	14.2	13.8	13.5	13.9	13.6	14.7	10.7
9/1/82	13.1	13.2	13.0	11.9	13.3	12.3	13.4	11.6
10/1/82	12.3	12.4	12.1	10.9	12.2	11.7	12.5	10.7
11/1/82	11.5	11.4	11.6	9.9	11.4	10.3	12.6	10.7
12/1/82	11.7	11.5	11.8	9.8	11.2	10.7	12.5	11.7
1/1/83	11.3	11.1	11.5	9.3	11.3	10.7	12.5	11.4
2/1/83	11.9	11.5	12.2	9.5	11.6	11.2	13.2	12.9
3/1/83	11.3	10.9	11.6	9.1	10.7	9.8	13.5	12.1
4/1/83	11.4	11.2	11.6	9.9	11.5	11.1	12.7	11.8
5/1/83	11.0	10.8	11.2	8.9	11.2	10.5	12.2	11.1
6/1/83	11.7	11.4	11.9	10.0	12.0	11.5	12.8	12.2

Date	Equivalent Rate for			Forward Rate in Year				
	Composite**	Retireds***	Actives****	1	5	10	15	20
7/1/83	11.7	11.6	11.8	10.1	12.1	11.8	12.4	11.5
8/1/83	12.5	12.4	12.6	10.9	12.7	13.0	12.8	11.8
9/1/83	12.7	12.5	12.8	10.9	13.6	12.4	13.3	12.4
10/1/83	12.0	11.9	12.1	10.2	12.8	12.1	12.8	11.4
11/1/83	12.4	12.2	12.5	10.1	12.8	12.2	13.1	12.2
12/1/83	12.2	12.0	12.3	10.3	12.6	12.1	12.9	11.7
1/1/84	12.3	12.2	12.4	10.5	12.9	12.2	12.9	11.7
2/1/84	12.2	12.0	12.4	10.2	12.7	12.1	12.8	12.2
3/1/84	12.6	12.4	12.8	10.6	13.1	12.3	13.1	13.0
4/1/84	13.0	12.9	13.1	11.4	13.8	12.9	13.1	13.1
5/1/84	13.3	13.2	13.4	11.5	14.1	13.1	13.5	13.2
6/1/84	14.4	14.4	14.3	12.8	15.2	14.2	13.9	13.8
7/1/84	14.3	14.3	14.2	12.9	14.7	14.1	13.8	13.9
8/1/84	13.4	13.4	13.3	12.5	13.8	13.6	13.3	12.3
9/1/84	13.1	13.2	13.0	12.5	13.6	13.3	12.5	12.5
10/1/84	12.8	12.9	12.7	12.0	13.4	12.7	12.6	12.1
11/1/84	12.1	12.1	12.1	10.8	12.7	12.2	12.1	11.5
12/1/84	12.1	12.0	12.2	10.0	13.0	12.2	12.6	11.4
1/1/85	12.1	11.9	12.2	9.7	13.3	12.3	12.6	11.2
2/1/85	11.7	11.5	11.8	9.4	12.5	12.2	12.3	10.8

Date	Equivalent Rate for			Forward Rate in Year				
	Composite**	Retireds***	Actives****	1	5	10	15	20
3/1/85	12.4	12.3	12.6	10.2	13.3	12.8	13.3	11.6
4/1/85	12.3	12.1	12.4	10.0	12.9	12.5	13.2	11.6
5/1/85	12.2	11.8	12.5	9.5	12.7	12.0	13.3	12.8
6/1/85	11.1	10.7	11.4	8.4	11.8	11.4	12.5	11.9
7/1/85	11.0	10.6	11.3	8.1	11.4	11.5	12.0	11.6
8/1/85	11.4	11.0	11.7	8.7	12.1	11.9	12.4	11.7
9/1/85	11.1	10.7	11.5	8.4	11.8	11.6	12.6	11.4
10/1/85	11.3	10.8	11.7	8.5	11.6	12.0	12.9	11.8
11/1/85	10.9	10.5	11.3	8.4	11.2	11.6	12.4	11.4
12/1/85	10.4	10.0	10.8	8.3	10.7	10.9	11.9	11.1
1/1/86	9.9	9.4	10.3	7.9	9.8	10.4	11.8	10.8
2/1/86	9.9	9.5	10.3	7.9	9.9	10.6	11.4	10.6
3/1/86	8.8	8.5	9.0	7.7	8.7	8.9	9.7	9.4
4/1/86	7.8	7.7	8.0	7.0	7.8	7.9	7.8	8.7
5/1/86	7.9	7.8	8.0	6.8	7.8	8.3	8.5	9.5
6/1/86	8.6	8.5	8.7	7.2	7.8	9.7	8.8	10.6
7/1/86	8.1	7.9	8.2	6.7	8.1	8.7	9.5	8.2
8/1/86	8.2	7.9	8.4	6.5	8.1	9.2	10.8	8.6
9/1/86	7.7	7.5	7.9	5.6	7.9	8.8	10.0	8.2
10/1/86	8.2	8.0	8.3	6.0	8.5	9.5	10.6	9.0

Date	Equivalent Rate for			Forward Rate in Year				
	Composite**	Retireds***	Actives****	1	5	10	15	20
11/1/86	8.0	7.8	8.2	5.9	8.3	9.2	10.2	9.1
12/1/86	7.8	7.6	7.9	5.9	8.1	8.8	10.3	8.8
1/1/87	7.9	7.7	8.1	6.3	7.1	9.5	7.2	12.6
2/1/87	7.8	7.6	7.9	6.1	7.6	8.8	7.7	12.0
3/1/87	7.7	7.5	7.9	6.2	7.6	8.1	9.6	8.8
4/1/87	8.0	7.8	8.2	6.4	7.9	8.5	9.5	9.1
5/1/87	8.7	8.5	8.9	7.2	8.7	9.1	10.1	9.1
6/1/87	8.9	8.8	9.0	7.4	8.9	9.4	9.9	9.3
7/1/87	8.8	8.7	9.0	7.2	9.1	9.3	10.0	9.3
8/1/87	9.2	9.0	9.4	7.3	9.4	10.1	10.1	9.3
9/1/87	9.4	9.3	9.6	7.7	8.5	9.0	9.3	9.4
10/1/87	10.1	9.9	10.3	8.3	10.3	10.5	11.4	10.3
11/1/87	9.3	9.2	9.5	7.5	9.7	9.6	10.8	10.0
12/1/87	9.4	9.2	9.5	7.5	9.8	9.8	10.9	9.5

*Treasury bills, notes and bonds.

**Mean of rate for retired and active

***For average age (weighted by liability)of 69.

****For average age (weighted by liability) of 50 with an average retirement age of 63.

TABLE 2

INTEREST RATE EQUIVALENT TO
THE PBGC PLAN TERMINATION ANNUITY RATES

Period	Equivalent Rate for		
	Composite*	Retireds**	Actives***
6-1-78 to 2-28-79	6.9%	7.25%	6.5%
3-1-79 to 8-31-79	7.1	7.50	6.8
9-1-79 to 11-30-79	7.4	7.75	7.1
12-1-79 to 2-29-80	8.1	8.50	7.6
3-1-80 to 8-31-80	8.4	8.75	8.1
9-1-80 to 11-30-80	8.6	9.00	8.3
12-1-80 to 12-31-80	8.9	9.25	8.6
1-1-81 to 1-31-81	9.1	9.50	8.8
2-1-81 to 3-31-81	9.4	9.75	9.1
4-1-81 to 5-31-81	9.6	10.00	9.3
6-1-81 to 6-30-81	9.9	10.25	9.6
7-1-81 to 7-31-81	10.1	10.50	9.8
8-1-81 to 9-30-81	9.9	10.25	9.6
10-1-81 to 10-31-81	10.1	10.50	9.8

Period	Equivalent Rate for		
	Composite*	Retireds**	Actives***
11-1-81 to 11-30-81	10.4	10.75	10.1
12-1-81 to 12-31-81	10.6	11.00	10.3
1-1-82 to 1-31-82	10.1	10.50	9.8
2-1-82 to 2-28-82	10.4	10.75	10.1
3-1-82 to 5-31-82	10.6	11.00	10.3
6-1-82 to 7-31-82	10.4	10.75	10.1
8-1-82 to 9-30-82	10.6	11.00	10.3
10-1-82 to 10-31-82	10.4	10.75	10.1
11-1-82 to 11-30-82	10.1	10.50	9.8
12-1-82 to 12-31-82	9.9	10.25	9.6
1-1-83 to 1-31-83	9.6	10.00	9.3
2-1-83 to 3-31-83	9.4	9.75	9.1
4-1-83 to 5-31-83	9.1	9.50	8.8
6-1-83 to 8-31-83	8.9	9.25	8.6
9-1-83 to 1-31-84	9.1	9.50	8.8
2-1-84 to 2-29-84	9.4	9.75	9.1
3-1-84 to 3-31-84	9.1	9.50	8.8
4-1-84 to 4-30-84	9.4	9.75	9.1
5-1-84 to 6-30-84	9.6	10.00	9.3

Period	Equivalent Rate for		
	Composite*	Retireds**	Actives***
7-1-84 to 7-31-84	10.1	10.50	9.8
8-1-84 to 8-31-84	10.4	10.75	10.1
9-1-84 to 10-31-84	10.1	10.50	9.8
11-1-84 to 11-30-84	9.9	10.25	9.6
12-1-84 to 12-31-84	9.6	10.00	9.3
1-1-85 to 2-28-85	9.4	9.75	9.1
3-1-85 to 3-31-85	9.1	9.50	8.8
4-1-85 to 4-30-85	9.4	9.75	9.1
5-1-85 to 5-31-85	9.6	10.00	9.3
6-1-85 to 6-30-85	9.4	9.75	9.1
7-1-85 to 9-30-85	8.9	9.25	8.6
10-1-85 to 12-31-85	8.6	9.00	8.3
1-1-86 to 1-31-86	8.4	8.75	8.1
2-1-86 to 3-31-86	8.1	8.50	7.8
4-1-86 to 4-30-86	7.6	8.00	7.3
5-1-86 to 9-30-86	7.4	7.75	7.1
10-1-86 to 10-31-86	7.1	7.50	6.8
11-1-86 to 11-30-86	7.4	7.75	7.1
12-1-86 to 2-28-87	7.1	7.50	6.8

Period	Equivalent Rate for Composite*	Retireds**	Actives***
3-1-87 to 5-31-87	6.9	7.25	6.6
6-1-87 to 6-30-87	7.1	7.50	6.8
7-1-87 to 9-30-87	7.4	7.75	7.1
10-1-87 to 10-31-87	7.6	8.00	7.3
11-1-87 to 12-31-87	7.9	8.25	7.6

*Mean of rate for retired and active.
**Actual rate.
***for average age (weighted by liability) of 50 with an average retirement age 63.

Exhibit 16A

INTEREST BASIS: Buck Forward Interest Rates

CONTRIBUTION BASIS: Includes CEN-VI-RO Contributions

WORKSHEET FOR ESTIMATING
WITHDRAWAL LIABILITY FROM THE
SOUTHERN CALIFORNIA LABORERS PENSION TRUST
DURING YEAR ENDED DECEMBER 31, 1981

1. What were your company's contributions to the Pension Fund during the five years ending:

   a. December 31, 1979 $146,699.67
   b. December 31, 1980 $118,520.96

2. The aggregate Pension Fund contributions on behalf of continuing employers during these five years were as follows:

   a. December 31, 1979 $273,549,700
   b. December 31, 1980 $320,467,000

3. Percent of total Pension Fund contributions for which you were obligated:

   a. Divide 1a by 2a .000536282
   b. Divide 1b by 2b .000369838

4. The Pension Fund's aggregate unfunded vested liability pools as of December 31, 1980 are as follows:

   a. Pool as of December 31, 1979 $288,786,182
   b. Pool as of December 31, 1980 $(43,622,922)

5. Your estimated withdrawal assessment before the offset is determined as follows:

   a. Line 3a multiplied by line 4a $154,870.83
   b. Line 3b multiplied by line 5b [sic] $(16,133.41)

   c. Total of a and b $138,737.42

6. Offset amount:

   - If line 5c is less than $100,000, then the offset amount equals $50,000.

   - If line 5c is greater than $150,000, then the offset amount equals $0.

   - If line 5c exceeds $100,000 but is less than $150,000, then the offset amount equals $50,000 minus the amount by which line 5c exceeds $100,000; for example, if line 5c equals $130,000, then the offset amount equals $20,000. $11,262.58

7. Your estimated withdrawal assessment equals line 5c less line 6: $127,474.84

Exhibit 16B

INTEREST BASIS: Buck Forward Interest Rates

CONTRIBUTION BASIS: Excludes CEN-VI-RO Contributions

WORKSHEET FOR ESTIMATING
WITHDRAWAL LIABILITY FROM THE
SOUTHERN CALIFORNIA LABORERS PENSION TRUST
DURING YEAR ENDED DECEMBER 31, 1981

1. What were your company's contributions to the Pension Fund during the five years ending:

   a. December 31, 1979 $102,656.68
   b. December 31, 1980 $102,705.28

2. The aggregate Pension Fund contributions on behalf of continuing employers during these five years were as follows:

   a. December 31, 1979 $273,549,700
   b. December 31, 1980 $320,467,000

3. Percent of total Pension Fund contributions for which you were obligated:

   a. Divide 1a by 2a .000375276
   b. Divide 1b by 2b .000320486

4. The Pension Fund's aggregate unfunded vested liability pools as of December 31, 1980 are as follows:

   a. Pool as of December 31, 1979 $288,786,182
   b. Pool as of December 31, 1980 $(43,622,922)

5. Your estimated withdrawal assessment before the offset is determined as follows:

   a. Line 3a multiplied by line 4a $108,375.52
   b. Line 3b multiplied by line 5b [sic] $(13,980.54)

   c. Total of a and b $94,394.98

6. Offset amount:

   - If line 5c is less than $100,000, then the offset amount equals $50,000. $50,000

   - If line 5c is greater than $150,000, then the offset amount equals $0.

   - If line 5c exceeds $100,000 but is less than $150,000, then the offset amount equals $50,000 minus the amount by which line 5c exceeds $100,000; for example, if line 5c

equals $130,000, then the offset amount equals $20,000.

7. Your estimated withdrawal assessment equals line 5c less line 6: $44,394.98

Exhibit 16C

INTEREST BASIS: PBGC Rates

CONTRIBUTION BASIS: Includes CEN-VI-RO Contributions

WORKSHEET FOR ESTIMATING
WITHDRAWAL LIABILITY FROM THE
SOUTHERN CALIFORNIA LABORERS PENSION TRUST
DURING YEAR ENDED DECEMBER 31, 1981

1. What were your company's contributions to the Pension Fund during the five years ending:

   a. December 31, 1979 $146,699.67
   b. December 31, 1980 $118,520.96

2. The aggregate Pension Fund contributions on behalf of continuing employers during these five years were as follows:

   a. December 31, 1979 $273,549,700
   b. December 31, 1980 $320,467,000

3. Percent of total Pension Fund contributions for which you were obligated:

   a. Divide 1a by 2a .000536282
   b. Divide 1b by 2b .000369838

4. The Pension Fund's aggregate unfunded vested liability pools as of December 31, 1980 are as follows:

   a. Pool as of December 31, 1979 $382,254,700
   b. Pool as of December 31, 1980 $12,502,600

5. Your estimated withdrawal assessment before the offset is determined as follows:

   a. Line 3a multiplied by line 4a $204,996.32
   b. Line 3b multiplied by line 5b [sic] $4,623.94

   c. Total of a and b $209,620.26

6. Offset amount:

   - If line 5c is less than $100,000, then the offset amount equals $50,000.

   - If line 5c is greater than $150,000, then the offset amount equals $0.

   - If line 5c exceeds $100,000 but is less than $150,000, then the offset amount equals $50,000 minus the amount by which line 5c exceeds $100,000; for example, if line 5c equals $130,000, then the offset amount equals $20,000.

7. Your estimated withdrawal assessment equals line 5c less line 6: $209,620.26

Exhibit 16D

INTEREST BASIS: PBGC Rates

CONTRIBUTION BASIS: Excludes CEN-VI-RO Contributions

WORKSHEET FOR ESTIMATING
WITHDRAWAL LIABILITY FROM THE
SOUTHERN CALIFORNIA LABORERS PENSION TRUST
DURING YEAR ENDED DECEMBER 31, 1981

1. What were your company's contributions to the Pension Fund during the five years ending:

   a. December 31, 1979 $102,656.68
   b. December 31, 1980 $102,705.28

2. The aggregate Pension Fund contributions on behalf of continuing employers during these five years were as follows:

   a. December 31, 1979 $273,549,700
   b. December 31, 1980 $320,467,000

3. Percent of total Pension Fund contributions for which you were obligated:

   a. Divide 1a by 2a .000375276
   b. Divide 1b by 2b .000320486

4. The Pension Fund's aggregate unfunded vested liability pools as of December 31, 1980 are as follows:

   a. Pool as of December 31, 1979 $382,254,700
   b. Pool as of December 31, 1980 $12,502,600

5. Your estimated withdrawal assessment before the offset is determined as follows:

   a. Line 3a multiplied by line 4a $143,451.01
   b. Line 3b multiplied by line 5b [sic] $4,006.91

   c. Total of a and b $147,457.92

6. Offset amount: 2,542.08

   - If line 5c is less than $100,000, then the offset amount equals $50,000.
   - If line 5c is greater than $150,000, then the offset amount equals $0.
   - If line 5c exceeds $100,000 but is less than $150,000, then the offset amount equals $50,000 minus the amount by which line 5c exceeds $100,000; for example, if line 5c equals $130,000, then the offset amount equals $20,000.

7. Your estimated withdrawal assessment equals line 5c less line 6: $144,915.84

AMERICAN ARBITRATION ASSOCIATION

In the Matter of Arbitration	)	
	)	No.
Between	)	72-621-0001-87
CONSTRUCTION LABORERS	)	MEPPA [sic]
PENSION TRUST FOR	)	
SOUTHERN CALIFORNIA	)	
	)	
and	)	
	)	
CONCRETE PIPE AND	)	
PRODUCTS COMPANY OF	)	
CALIFORNIA	)	
	)	

DECISION AND AWARD

of

KENNETH M. SCHWARTZ
Arbitrator

Dated: August 16, 1988

Introduction

This is the second phase of a bifurcated arbitration proceeding between Construction Laborers Pension Trust Fund for Southern California ("Trust") and Concrete Pipe and Products Company of California ("Concrete Pipe"). This proceeding was conducted pursuant to an order of the United States District Court for the Central District of California and was in accord with Section 4221 of the Multi-Employer Pension Plan Amendments Act of 1980

(MEPPA) [sic]. The hearing was held in Los Angeles, California, in the offices and under the auspices of the American Arbitration Association on February 18, 1988.

Counsel appearing for the Trust were Cox, Castle & Nicholson, by Everett G. Beers, Esq.

Counsel appearing for Concrete Pipe were Diepenbrock, Wulff, Plant & Hannegan, by James M. Nelson, Esq.

The dispute between the parties arose out of the attempts of the Trust to seek an award upholding its assessment of withdrawal liability on Concrete Pipe in the principal amount of $268,168.81.

The first phase of the arbitration hearing was held in Los Angeles, California, on June 25, 1987. As a result of said hearing, this Arbitrator issued his Award on August 27, 1987, at which time he concluded that the withdrawal of Concrete Pipe was covered by MEPPA [sic] and that Concrete Pipe would be liable for payment of its share of unfunded vested liability of the Trust Pension Plan when it withdrew from the Plan in 1981.

In this second phase of this proceeding, the issue to be resolved by the Arbitrator is the amount of withdrawal liability due the Trust based upon the applicable law.

I

Facts Pertinent to Resolution of the Amount of Withdrawal Liability

The parties to this proceeding had entered into a stipulation of facts in the District Court proceeding

docketed as *Construction Laborers Pension Trust For Southern California v. Concrete Pipe of California*, Case No. CV 82-5184.

For purposes of convenience, the relevant paragraphs of said stipulation are summarized and set forth below:

Concrete Pipe is a California corporation doing business within the Central District of California; the Trust is an expressed Trust organized under the Labor-Management Relations Act of 1947, as amended; that said Trust is an express Trust formed under a Trust Agreement entered into among the Southern California District Council of Laborers ("Union") and several multi-Employer associations; that said Trust primarily covers employees in the building and construction industry and is managed by a Board of Trustees, half of whom are selected by the Union and the other half selected by the multi-Employer associations.

The Trust derives revenues from Employer contributions made by Employers bound to Collective Bargaining Agreements with the Union; these Collective Bargaining Agreements require signatory Employers to make contributions to the Trust for each hour worked by employees within the bargaining units covered by the Collective Bargaining Agreements involved.

Cen-Vi-Ro and the Union (as well as the affiliated Local 220 located in Bakersfield) were signatories to such a Collective Bargaining Agreement prior to November 30, 1976, covering terms and conditions of work (including Trust coverage) of employees represented by Local 220 at the Shafter Plant.

On and before November 30, 1976, a plant for the manufacture of concrete pipe located at Shafter, California, was owned by Cen-Vi-Ro and as of December 1, 1976, this plant became owned by Concrete Pipe and has been owned by it at all times since that date.

On December 1, 1976, and thereafter, Concrete Pipe honored the terms of the Collective Bargaining Agreement between Cen-Vi-Ro and the Union which expired in 1978. On November 27, 1978, Concrete Pipe entered into a new Collective Bargaining Agreement with the Union which likewise provided for contributions to the Trust for each hour worked by employees within the bargaining unit covered by the Collective Bargaining Agreement. This Agreement contained provisions in respect to the appropriate notices to be given by the parties to each other in respect to terminating the Agreement.

Pursuant to the Trust Fund contribution provisions of the new Agreement signed by the Union and Concrete Pipe on November 27, 1978, and the Trust Fund contributing provisions of the Agreement between Cen-Vi-Ro and the Union that Concrete Pipe had honored since December 1, 1976, Concrete Pipe had paid the Trust $102,656.68.

On April 21, 1981, the Union sent the appropriate notice of reopening of the Labor Agreement for negotiations, as did Concrete Pipe likewise on May 1, 1981.

For reasons not material to this phase of the proceedings, negotiations broke down resulting in an impasse between the parties.

On August 17, 1979, Concrete Pipe ceased production at the Shafter Plant.

For hours worked in May 1980, Concrete Pipe contributed $48.60 to the Trust. That was the last contribution of Concrete Pipe to the Trust.

On January 20, 1982, the Trust notified Concrete Pipe of its alleged withdrawal liability of $268,168.81 and demanded payment with a prescribed schedule.

Concrete Pipe has not made any payment on the alleged withdrawal.

Concrete Pipe has not been financially incapable of paying any scheduled benefit to any of its beneficiaries.

The Trust has been informed by its independent actuary, The Martin E. Segal Company, Inc., that as of December 31, 1981, it had an aggregate unfunded vested liability of *$532,621,400;* that as of December 31, 1980, it had an unfunded vested liability of *$514,181,200;* and that as of December 31, 1979, it had an unfunded vested liability of *$493,322,600.* (The stipulation shows as of December 31, 1979, an aggregate unfunded vested liability in the amount of *$532,621,400,* whereas Exhibit "F" to the stipulation, entitled "Report on Employer Withdrawal Liability," shows in Section II, entitled "The Plan's Withdrawal Liability Pools," the amount as of December 31, 1979, to be *$493,392,600.*) (Emphasis mine)

No shareholder, officer, director, agent or representative of Concrete Pipe has, during the period from 1976 to the present date, had any participation in:

(a) the investment decisions pertaining to the assets of the Trust;

(b) the decisions of the Trust to adjust Pension Benefit levels;

(c) the decisions affecting the Trust's administrative costs; or

(d) the selection of actuarial assumptions or methods upon which Concrete Pipe's asserted withdrawal liability has been calculated.

The Trust's decisions are made by the Trustees. At no time did Concrete Pipe choose to apply for membership or belong to any of the multi-Employer Associations who select one-half of the Trustees on the Board of Trustees, nor had Concrete Pipe ever been denied membership in said Associations.

II

Contentions of the Parties

A. Concrete Pipe contends that:

1. The actuarial assumptions and methods used in computing its withdrawal liability were not reasonable in the aggregate; moreover, the computations contained significant errors in the application of the actuarial assumption used, such as:

(a) accrual of contributions from other Employers in assessing Concrete Pipe's withdrawal liability;

(b) incorrect application of Trust's own actuarial standards in computing the withdrawal liability; and

(c) use of actuarial assumptions which are unreasonable when considered individually and result in the over-all actuarial assumptions and methods being unreasonable in the aggregate.

2. Presumption contained in 29 U.S.C. Section 1401 that the decisions by the Trust and the Trust Fund's actuary are presumed correct result in an unconstitutional deprivation of due process. Further, that the preponderance of the evidence establishes that the withdrawal liability determination is clearly erroneous.

3. There are reasonable actuarial assumptions which can be applied to this case which would result in reducing the withdrawal liability to $41,523.15.

B. The Trust contends that:

1. The two-tiered Segal method of calculating the Trust's unfunded vested liability was based in the aggregate, on reasonable actuarial assumptions, and therefore the Trust's determination of the amount of withdrawal liability should be upheld.

2. The Trust's actuarial assumptions made in accounting for unrecorded past service credit were reasonable, having been based on an objective and statistically significant survey.

3. Requiring a withdrawing Employer to pay the same share of the Plan's unfunded vested liability (exclusive of interest) regardless of whether it pays in a lump sum or in installments is reasonable.

4. The presumption in favor of the Trust that requires a withdrawing Employer to carry

the burden of proof that Trust's determinations are unreasonable is simply a constitutional allocation of burden of proof to Employer in withdrawal liability cases; hence, in order to defeat Trust's calculations, Concrete Pipe has burden of showing that the determination was "unreasonable or clearly erroneous."

5. When Concrete Pipe purchased Cen-Vi-Ro and continued its obligation to contribute to the Trust, Concrete Pipe inherited Cen-Vi-Ro's contribution history; hence, is liable for the full share of withdrawal liability, plus accrued interest.

III

Analysis, Discussion and Conclusions

A. Constitutionality of 29 U.S.C. § 1401(a)(3)(A).

Concrete Pipe has raised the question of the constitutionality of the presumption in 29 U.S.C. Section 1401(a)(3)(A). The argument made is that the section is void because it "unconstitutionally" violates Concrete Pipe and Products' right to an impartial decisionmaker, and, hence, its right to procedural due process of law.

While the arguments made by counsel for Concrete Pipe are thought provoking, nonetheless, this Arbitrator shares the view of counsel for the Trust as to what the Arbitrator's role is in this proceeding. It is clear that the question of constitutionality of statutory provisions should be adjudicated in court proceedings. As pointed out by the court in *Republic Industries v. Central*

Pennsylvania Teamsters Pension Fund, 693 F.2d 290, 296 (3rd Cir. 1982):

> "[T]he legislature could not have intended to defeat separation of powers principles by allowing an administrative tribunal to review the constitutional validity of a statute – a function reserved for the judiciary. It would be unconstitutional, therefore, to compel the arbitrator to review the facial constitutionality of MPPA [sic]."

It should be noted that the matter of the constjtutionality of the statutory provision of ERISA presumption was upheld by the Ninth Circuit Court of Appeals in the case of *Board of Trustees of the Western Conference of Teamsters Pension Trust Fund v. Thompson Building Materials*, 749 F.2d 1396; *cert. denied*, 471 U.S. 1054. It is recognized that the Third Circuit in the case of *United Retail & Wholesale Employees Teamsters Union Local No. 115 Pension Plan v. Yahn & McDonnell, Inc.*, 787 F.2d 128, held the presumption of correctness to be unconstitutional. Notwithstanding the *Yahn* case, the law in California, being in the Ninth Circuit, is as stated in the *Thompson* case, *supra*, decision, namely, that the provisions of Section 1401 are constitutional.

This Arbitrator is fully in accord with the decision of the court in the *Republic Industries* case, *supra*; hence, believes that the issue of constitutionality of the statute is for the Federal Courts and not the Arbitrator.

B. Whether Concrete Pipe When it Purchased Cen-Vi-Ro's Business and Continued Cen-Vi-Ro's Obligation to Continue to the Trust, Inherited Cen-Vi-Ro's Contribution History and, Hence, Became Liable for its Full Share of Withdrawal Liability of $268,168.61, Plus Accrued Interest.

The Trust contends that Concrete Pipe inherited the contribution history for 1976, the year in which it purchased Cen-Vi-Ro and is, therefore, liable for its full share of withdrawal liability as indicated herein. The Trust relies upon the express words found in the statute in Section 1384(b) in support for its position. Said Section provides:

> "[T]he liability of the purchaser shall be determined as if the purchaser had been required to contribute to the plan in the year of the sale and the 4 plan years preceding the sale the amount the seller was required to contribute for such operations for such 5 plan years."

The argument by the Trust is that, in the instant case, Concrete Pipe inherited the contribution history for 1976, the year in which the purchase took place.

Furthermore, the Trust argues, even if the express words of MEPPA [sic] did not so provide, Concrete Pipe would nevertheless be liable under the labor law "successorship doctrine."

The reliance of the Trust on Section 1384, in the opinion of the Arbitrator, is misplaced.

The provisions of MEPPA [sic] as they relate to withdrawal liability of employers withdrawing from multi-employer pension plans is applicable to all employers

withdrawing from such plans on or after September 26, 1980. Under the provisions of the Act, the employer who withdraws from the plan is liable to the plan for the employer's allocable share of the plan's unfunded vested benefits. The unfunded vested benefits are defined as the difference between the assets of the trust and the current discounted value of all vested benefits eventually to be paid participants.

The Purchase and Sale Agreement between Cen-Vi-Ro and Concrete Pipe negotiated in 1976 is obviously not in compliance with the provisions of 29 U.S.C. Section 1384, for purposes of shifting the liability from the seller to the purchaser. The Purchase Agreement having been entered more than four (4) years prior to the enactment of the statute, there was no way for the parties to anticipate the statutory provisions. The Purchase and Sale Agreement did not provide for or require the purchaser to contribute to the Trust; nor did it compel the purchaser to post a bond or ensure that Cen-Vi-Ro was secondarily liable for withdrawal liability in the event Concrete Pipe withdraws as is provided for in 29 U.S.C. Section 1384.

Concrete Pipe's contention that Congress provided by statute in Section 1384 an exclusive mechanism for shifting liability as described herein has much merit.

In *Continental Inc. and Bakery Workers Pension Fund*, 5 EBC 1326, at 1336, Arbitrator Mittelman concluded that silence of the statute with respect to the pre-MEPPA [sic] sales of assets "is not an invitation to arbitral and judicial creativity" and that it must be regarded as "evidence of congressional intent to preclude its application." It is a conclusion with which this Arbitrator agrees.

An analysis of Section 1384 regarding conditions under which a seller's obligation to contribute and its contribution history is spelled out in the Section: In December 1982, the PBGC concluded that this section of the statute provided the exclusive method by which a seller may avoid withdrawal liability by transferring its obligation to an arms-length purchaser.

In the *Continental* case, *supra*, at 1337, the Arbitrator states, "One simply must assume, in the absence of even a glimmer in the legislative history of the Act indicating an assumption or belief that other principles of successorship might be applicable, that Congress intended and believes that Section 4204 provided the exclusive method of and criteria for applying successorship principles to *bona fide* arms-length sales of assets cases."

Hence, the refusal of Congress to provide for an automatic transfer of withdrawal liability must be construed to preclude the transfer of Cen-Vi-Ro withdrawal liability to Concrete Pipe.

The language found in *Massachusetts Mutual Life Insurance Company v. Russell*, 473 U.S. 134 (1985), may very well be depositive of the issue, where the Court held:

> "We are reluctant to tamper with an enforcement scheme crafted with such evident care as the one in ERISA. As we stated in *Transamerica Mortgage Advisors, Inc. v. Lewis*, 444 U.S. 11, 19, 62 L.Ed.2d 146, 100 Supreme Court 242 (1979): '[W]here a statute expressly provides a particular remedy or remedies, a court must be chary of

> reading others into it.' [Cite omitted] 'The presumption that a remedy was deliberately omitted from a statute is strongest when Congress has enacted a comprehensive legislative scheme, including an integrated system of procedures for enforcement.' [Cite omitted]" 473 U.S. 148.

The second contention of the Trust relates to the labor law doctrine of successorship.

Concrete Pipe points out, and properly so, that the only published decisions which have discussed the applicability of the "successor employer doctrine" as it relates to withdrawal liability have been rejected. The cases cited by Concrete Pipe in support of its contention of the inapplicability of the "successorship doctrine" are: *Richland Industries Ltd v. Robins*, 617 F.Supp. 639 (N.D. Illinois 1985); *Paperworkers Local 286 Pension Plan and Kardon Industries, Inc.*, 6 EBC 2398 (1985); *Superior Pocahontas Inc. v. Island Creek Coal Co.*, 657 F.Supp. 796 (S.D. W.Va. 1987).

The Trust's contention in respect to the "successorship doctrine" finds no support in court cases. The following citation from the *Massachusetts Mutual Life Insurance Company v. Russell* case, *supra*, 473 U.S. at 146, " . . . the assumption of inadvertent omission is rendered especially suspect upon close consideration of ERISA's interlocking, interrelated and independent remedial scheme which is in turn part of a comprehensive and reticulated statute," makes it clear that Congress did not intend to imply a remedy not specifically spelled out in the statute.

In the labor law field, the successorship cases relied upon by the Trust are: *John Wiley & Sons v. Livingston*, 376 U.S. 543 (1964); *NLRB v. Burns International Security*

Services, Inc., 406 U.S. 272 (1972); *Golden State Bottling Co. v. NLRB*, 414 U.S. 168 (1973); *Howard Johnson Co. v. Hotel Employees*, 417 U.S. 249 (1974), as well as the *Fall River Dyeing and Finishing Corp. v. NLRB*, 96 L.Ed.2d 22 (1987).

The court in the above-cited cases basically held that if it finds the employer to be a successor, then the successor assumes the obligation of bargaining collectively with the employees' representative which, of course, is quite different from assuming the Collective Bargaining Agreement of its predecessor.

For Concrete Pipe in order to be liable for the obligations of Cen-Vi-Ro, it would have to be shown that Cen-Vi-Ro, at the time of the transfer, had such an obligation in the first instance. To reiterate, the transfer of ownership took place in 1976, long before the enactment of MEPPA [sic]. Since Cen-Vi-Ro had no such withdrawal liability at the time of the transfer of ownership, no such transfer of liability to Concrete Pipe could take place.

In summary, since contractual liabilities under the successorship doctrine, as enunciated in *John Wiley & Sons v. Livingston, supra,* and *Golden State Bottling Co. v. NLRB, supra,* and others cited, are not applicable since the court did not require the parties to abide by the terms and conditions of the Labor Agreement, to which it had not agreed (unless it could be shown that the employer had actual notice and could have protected himself against such liability). In any event, for the reasons enunciated in *Richland Industries Ltd., supra,* it is concluded that the cases governing successor employers in labor cases have no application in ERISA cases.

As was pointed out in the *Richland Industries* case, at page 641, "A new employer, in other words, may be a successor for some purposes and not for others." The court further states, "In particular, Section 1384 of ERISA clearly establishes that a purchaser of assets may not be held liable for the seller's contribution history, absent a special arrangement with the seller by which the purchaser voluntarily assumes the liability."

It is clear that there could have been no voluntary arrangement between the seller, Cen-Vi-Ro, and the purchaser, Concrete Pipe, since neither party in 1976 was aware of a liability which was in the future to be known as withdrawal liability.

Accordingly, it is concluded that based upon the reasoning above, Concrete Pipe did not inherit the one-year contribution history of Cen-Vi-Ro when Concrete Pipe acquired ownership of the plant in 1976; hence, it is not liable for the share of withdrawal liability which was included by the Trust in its original calculation.

The contention by the Trust that the issue of Cen-Vi-Ro's contribution was not timely raised is without merit. There is sufficient evidence in the record to show that the issue was raised at least in 1982 and thereafter. In the instant phase, the ultimate issue to be resolved is the *amount* of Concrete Pipe's withdrawal liability to the Trust; accordingly, the matter of Cen-Vi-Ro's contribution is properly before the Arbitrator.

In its Closing Brief, the Trust has attached as Exhibit A the monetary consequence of a holding that one year of contribution be eliminated by recomputing the withdrawal liability. The adjusted withdrawal liability, taking

into account the exclusion of the one year of Cen-Vi-Ro contribution history, reduces the withdrawal liability of Concrete Pipe to $190,465.57. Incidentally, Concrete Pipe, in its Reply Brief of May 27, 1988, acknowledges the correctness of the amount as recomputed.

C. Were Actuarial Assumptions and Methods Reasonable in the Aggregate?

The statutory standards for reviewing the correctness of the actuarial calculations and assumptions are set out in 29 U.S.C. 1393(a) (1) and 1401(a) (3).

Section 1393(a) (1) provides, in pertinent part:

> "Withdrawal Liability under this part shall be determined by each Plan on the basis . . . actuarial assumptions, which, in the aggregate are reasonable taking into account the experience and reasonable expectations) and which, in combination, offer the actuary's best estimate of anticipated experience under the Plan."

Further, Section 1401(a)(3) provides:

> "(A) For purposes of any proceeding under this section, any determination made by a Plan sponsor under Sections 1381 through 1399 of this title and Section 1405 of this title is presumed correct unless the party contesting the determination shows by a preponderance of the evidence that the determination was unreasonable or clearly erroneous.
>
> "(B) In the case of the determination of a Plan's unfunded vested benefits for a Plan year, the determination is presumed correct unless a

party contesting the determination shows by a preponderance of the evidence that –

> "(i) the actuarial assumptions and methods used in the determination were, in the aggregate, unreasonable (taking into account the experience of the Plan and reasonable expectations), or
>
> "(ii) the Plan's actuary made a significant error in applying the actuarial assumptions or methods."

In the case of *Michigan UFCW/Food Employers Pension Fund v. Eberhard Foods, Inc.*, 831 F.2d 1258 (6th Cir. 1987), the court upheld the Arbitrator's decision that the interest rate (6%) was not unreasonable. It held:

> "The burden of proof is on the employer. In meeting the burden, the test is not which withdrawal determination is the most reasonable but rather whether the challenged determination is unreasonable or clearly erroneous."

In recognizing the fact that actuaries may have different opinions, the court in *Eberhard, supra*, stated, at page 1261:

> "As the First Circuit observed in *Keith Fulton & Sons v. New England Teamsters*, 762 F.2d 1137 (1st Cir. 1985), the actual determination of withdrawal liability is not an exact science and therefore there is a range of reasonable actuarial determination of withdrawal liability [citation] Eberhard's actuary acknowledged this point, stating, 'I don't think there is a single answer as to reasonableness.' [citation] The statute does not anticipate that the actuary will always choose the figure the court would choose as the most reasonable from among the range. Rather,

> the only requirement is that in every case the actuarial determination will fall within the range of reasonableness . . . taking into account the unique characteristics of the Fund."

As pointed out by the Trust, all the Circuits with the exception of the Third Circuit in *United Retail v. Yahn*, 787 F.2d 128 (3rd Cir. 1986), have upheld and enforced the presumption.

In the intant case, the Martin E. Segal Company, the Trust's actuary, in calculating withdrawal liability used a method which takes into account a withdrawing employer's contributions to the Trust for a period of ten (10) years relative to the contributions of all other employers. The withdrawing employer is responsible for a proportional share of the Trust's "unfunded vested benefits" as that term is defined in Section 4213(c), i.e., as the value of nonforfeitable benefits under the Plan, less the value of assets of the Plan.

The Martin E. Segal Company has developed through the years a method which provides for two distinct interest rates. The method is sometimes referred to herein as the "two-tiered" method. The rates used under the Segal method are (1) the interest rates published by the PBGC for single employer plan terminations, and (2) the interest rate used by a pension plan for its funding valuation.

As between the two rates, the PBGC rate is fairly high while the rate for funding the Plan is relatively low.

What this method does is to provide for a blending of the two rates to arrive at the value of the nonforfeitable benefits.

To the extent that the market value on hand covers the liability, the investment return developed by the PBGC for single employer terminations would be applicable to determine the coverage provided by those current assets. In the instant case, as of December 31, 1980, and December 31, 1981, the corresponding investment return assumptions were 9.25% and 8.50%

To the extent the unfunded vested liability cannot be covered by the current assets (as is the case herein, where only one-third of the liability could be covered by the current assets), the remaining liability is determined by using the investment return rate of 6.0%, which is the same investment return rate assumption used by the Trust for funding purposes.

The explanation made by the Trust actuary is simply that hypothetically the current assets could be converted into cash and immediately invested to insure the payments of benefits in the future.

As should be pointed out, the investments on hand at the PBGC rates would not be sufficient to cover the liability for vested benefits and as a result thereof, the Trust actuary was required to make his "best estimate" based upon a long-range investment return. The Trust actuary made it clear that while PBGC rates could be applied to "money on hand," those rates could not be applied where funds are not available since there is no way to "lock in" a rate to funds which may be available in the future.

The Trust actuary in making his best estimate as to the future investment return based his estimate taking into account (a) historical long-term investment rates,

and (b) the Trust's own personal investment history. In doing so, the Trust actuary took into account the ten (10) year period from 1971-1980 and determined the *average* return for the period to be 6.85%. With that history in mind, the Trust actuary determined the 6.0% rate, which is the funding rate, to be reasonable taking into account further the melding of the PBGC rates of 9.25% and 8.50%. As can be seen, the melded rate is very close to the historical performance of the Trust.

Concrete Pipe in asserting the "two-tiered" rate was unreasonable called as its expert actuary witness Mr. Jon L. King. Mr. King is an enrolled actuary (Co. Exh. 13), and is presently employed as manager of Buck Consultants' Los Angeles office. He has been employed as a consulting actuary by Buck since 1986. King testified that his experience in pension plans has been limited to single-employer pension plans. Also, that Buck Consultants has no clients in California among the multi-employer pension funds.

King stated that he had reviewed the data upon which the actuary assumptions were made in the instant case and determined that there were three assumptions that concerned him: (1) the net income assumption, (2) unrecorded past credit assumption, and (3) lastly, the interest rate assumption. King allowed that the first two assumptions had minimal impact, so he focused on the interest rate assumption in coming to the conclusion that it was "unreasonable in the aggregate."

King further testified that he looked at "economic realities" in his analysis, "rather than looking at what assumptions are being used for this and that purpose by

other actuaries." King pointed out that he doesn't believe in following the "herd" (of actuaries).

In support of King's contention of the interest rate assumption being too low, King used his firm's published interest rates, entitled "Buck Forward Rates," which are a set of interest rates derived from the actual marketplace for risk-free United States securities, i.e., treasury bills and U. S. Government bonds and notes.

King expressed the opinion that he did not believe the assumptions used for funding were applicable to withdrawal liability cases and that not only was the interest rate assumption too low, but that the PBGC interest for single employer terminations was too low as well.

The standard that Mr. King would apply in consideration of whether the interest rate assumption was unreasonable or not would be that if it met the interest rate of the "Buck Forward Rates," it would be reasonable; otherwise, not.

It is interesting to note that King was unable to state any multi-employer pension fund which has used the "Buck Forward Rates" method.

It is noteworthy to point out the lack of expertise King has in respect to multi-Employer Pension Funds. There is a real difference between a multi-Employer Pension Fund and a single Employer Fund. In multi-Employer Funds, in a withdrawal situation, there is an ongoing continuation of the Plan. The employees of the withdrawing Employer are not dropped as participants of the Plan, but will continue to remain participants until such time as they are eligible for retirement benefits.

Further, notwithstanding the withdrawal of the Employer, the continuing Employers must continue their contributions to the Plan and the withdrawing Employer's obligation to the Plan must be balanced against the obligation of the Employers continuing to make contributions. In the termination of a single Employer plan, obligations to all plan participants are fixed and paid as of a certain date.

During his testimony in respect to reasonableness, King refers to the realities of the marketplace and competitive rates.

Actuaries, for the most part, agree that a funding valuation is not an exact science and, accordingly, there does not appear to be any one answer in defining "reasonableness." That being the case, the standards in the statutes, the court cases, as well as arbitrators' decisions, must be looked to in determining whether the facts in each case come within the parameters of the term "reasonable." In the *Eberhard* case, *supra*, the court upheld the Arbitrator's decision that the interest rate (6%) was *not* unreasonable.

While the actuary witness testifying for Concrete Pipe concludes that the Segal method in the determination of interest rate assumptions are unreasonable, he ignores 29 U.S.C. 1393(a)(l) of ERISA which mandates that the actuary take into account the experience of the plan and reasonable expectations. This the Segal Company has done in coming up with its best estimate.

Concrete Pipe's actuary concludes that the "two-tiered" method used in the computation of the withdrawal liability and the interest rate assumption used for

funding, as well as the PBGC rate, are "unreasonable in the aggregate."

The specific Segal method of using the interest rate assumption and the PBGC rates of interest comprising a blended rate have been the subject of numerous Arbitrator decisions.

Arbitrator William Hannan, in *Joy Mfg. Co.*, 5 EBC at 1135 (Feb. 1984), stated, "When we take into consideration that the 'blended rate' is a combination of the funding rate and the higher PBGC rate, we have an applicable rate which produces a withdrawal liability lower than the not unreasonable rate which most actuaries would have calculated . . . "

In *Ellis and Construction Laborers Pension Trust*, 5 EBC at 1175-76 (Feb. 1984), Arbitrator Martin Zimring upheld the use of the Segal formula as to blending of rates.

Walter Slater, the Arbitrator in *J. L. Denio, Inc. and Operating Engineers Pension Trust*, 8 EBC at 1990 (June 1987), states, "The boundaries of reasonableness appear to be PBGC rates on the high side and funding valuation rates on the low side. Somewhere in between we find such as the Segal Company's blend."

Concrete Pipe has the burden of rebutting the presumption of Section 1401 of ERISA and establishing by a preponderance of the evidence that the determination of the Plan sponsor was unreasonable. This they did not do.

IV

Conclusion

It is concluded, therefore, that Concrete Pipe has failed to carry the burden of overcoming the statutory presumption by a preponderance of the evidence.

V

Attorneys' Fees and Costs

Each party in this proceeding has requested that the legal expense, in the event of a successful result, be assessed against the other party. The Arbitrator does not feel justified in allocating either party's legal expense to the other. Both parties have acted in good faith and have diligently and professionally urged their respective positions; hence, each party will bear its own legal expenses and costs.

AWARD

At the outset of this phase of the arbitration proceedings, the parties agreed that the Arbitrator, after having taken evidence, hearing arguments as well as studying the briefs filed, would determine the money amount of the withdrawal liability due the Trust from Concrete Pipe and Products Company of California and render an appropriate award. Based upon the reasons aforesaid stated, the award is as follows:

1. Concrete Pipe and Products Company of California has failed to show by a preponderance of the evidence that, in the aggregate, the actuarial assumptions and methods used by

the Trust in the determination of Concrete Pipe and Products Company of California were unreasonable.

2. Concrete Pipe and Products Company of California is not liable for the one-year contribution history of Cen-Vi-Ro which was included in the Trust's original calculation.

3. Concrete Pipe and Products Company of California is liable for withdrawal liability of $190,465.57, plus accrued interest, to the Trust which the Trust acknowledges is the calculation of the liability using the same actuarial assumptions and methods as were applicable in the original calculation, except that the one-year contribution history of Cen-Vi-Ro is eliminated.

4. The Arbitrator's fees and expenses together with the administrative fees of the American Arbitration Association shall be shared equally by the parties. Each party shall bear its own costs and legal expenses.

/s/ Kenneth M. Schwartz
KENNETH M. SCHWARTZ, Arbitrator

Dated: August 16, 1988

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

CONCRETE PIPE AND PRODUCTS COMPANY OF CALIFORNIA, a California Corporation, Plaintiff, v. CONSTRUCTION LABORERS PENSION TRUST FUND FOR SOUTHERN CALIFORNIA, Defendant.	No. 88-05759LTL(Tx) ACTION PURSUANT TO 29 U.S.C. § 1401(b)(2) TO VACATE AND/OR MODIFY ARBITRATOR'S AWARD (Filed Sep. 26, 1988)

JURISDICTION AND VENUE

1. This court has jurisdiction pursuant to 28 U.S.C. § 1331, 29 U.S.C. § 186(c), 29 U.S.C. § 1401 and 29 U.S.C. § 1451.

2. Plaintiff Concrete Pipe and Products Company of California, a California corporation (hereafter "CP&P"), is an employer engaged in interstate commerce and/or an industry in interstate commerce. Plaintiff contributed to the defendant Construction Laborers Pension Trust Fund for Southern California consistent with the terms of a collective bargaining agreement.

3. Defendant Construction Laborers Pension Trust Fund for Southern California (hereafter "CLPT") is a multi-employer pension trust fund established and maintained by employers engaged in interstate commerce consistent with 29 U.S.C. § 186(c)(5) and 29 U.S.C. § 1001, *et seq.*

4. CLPT has contended that CP&P has an obligation to pay withdrawal liability under the terms of the Multi-Employer Pension Plan Amendments act of 1980 (MPPAA), 29 U.S.C. § 1301, *et seq.* CP&P has consistently denied that it has a withdrawal liability obligation.

5. On October 6, 1982, an action was filed by CP&P against CLPT in the Eastern District of California, which was ultimately transferred to this district. That case is currently pending as cause no. 82-5184-MML.

6. The dispute between the parties was ordered to arbitration in case no. 82-5184-MML. The arbitration has occurred, and a final decision was issued on August 16, 1988. CP&P brings this action to vacate and/or modify portions of the arbitrator's decision.

7. Venue of this action is properly in the United States District Court for the Central District of California pursuant to 29 U.S.C. § 1451(d).

8. This action is related to case nos. CV. 82-5184-HLH and 83-132-HLH pursuant to Local Rule 4.3.1, and plaintiff hereby provides "Notice of Related Case."

ALLEGATIONS REGARDING ARBITRATION

9. The arbitration matter was bifurcated and hearings held on two separates dates. The first phase of the hearing was held in Los Angeles, California on June 25, 1988 [sic]. That phase of the hearing was, by stipulation of the parties, to resolve the date on which CP&P withdrew for purposes of determining whether MPPAA was applicable to the CP&P withdrawal from CLPT.

10. Arbitrator Kenneth M. Schwartz issued his decision on this phase of the proceeding on August 27, 1988 [sic], concluding that CP&P's withdrawal was covered by MPPAA, and that CP&P would be liable for payment of its share of the unfunded vested liability of the pension plan. Arbitrator Schwartz erroneously determined that CP&P withdrew during 1981. A copy of Arbitrator Schwartz' decision and award on the first phase of the proceeding is attached as Exhibit A.

11. The second phase of the hearing was, by stipulation of the parties, to determine the amount of withdrawal liability, if any, which was due from CP&P. The hearing on this phase of the arbitration was held in Los Angeles, California, on February 18, 1988. Arbitrator Schwartz issued his decision on August 16, 1988, erroneously finding that CP&P was liable for withdrawal liability in the amount of $190,465.57, plus interest, but determined that neither party should be awarded attorney's fees for events leading up to the conclusion of the

arbitration. A copy of Arbitrator Schwartz' Decision and Order on the second phase of the proceeding is attached to this Complaint as Exhibit B.

12. This action to vacate and/or modify Arbitrator Schwartz' arbitration decision is timely filed pursuant to 29 U.S.C. § 1401(b)(2).

13. The arbitration decision should be vacated because:

(a) MPPAA violates numerous constitutional rights of plaintiff, including but not limited to those rights and violations described in cause no. 82-5184-HLH and 83-132-HLH;

(b) MPPAA, and particularly 29 U.S.C. § 1401, unconstitutionally deprives plaintiff of due process in the form of the right to an impartial decision maker prior to the taking of property. Plaintiff recognizes the existence of the Ninth Circuit's decision in *Board of Trustees of the Western Conference of Teamsters Pension Trust v. Thompson Building Materials*, 749 F.2d 1396 (9th Cir. 1984) cert. denied 471 U.S. 1054, 85 L.Ed.2d 481, 105 S.Ct. 2116 (1985), but submits that this case is wrongly decided and the correct analysis is provided in *United Retail and Wholesale Employees Teamsters Union Local No. 115 Pension Plan v. Yahn & McDonnell, Inc.*, 787 F.2d 128 (3rd Cir. 1986) affirmed by equally divided court, ___ U.S. ___; ___ 95 L.Ed. 2d 692; 107 S.Ct. 567 (1987);

(c) A clear preponderance of the evidence establishes that the CP&P facility in question suffered a permanent cessation of operations on August 17, 1979, and is therefore not subject to coverage or withdrawal

liability under MPPAA, contrary to the arbitrator's finding.

14. The arbitrator's decision should also be vacated and/or modified because the clear preponderance of the evidence establishes that:

(a) The actuarial assumptions and methods used in the withdrawal liability calculation were, in the aggregate, unreasonable (taking into account the experience of the plan and reasonable expectations);

(b) The plan's actuaries made significant errors in applying the actuarial assumptions or methods;

(c) CLPT failed and/or refused to apply the actuarial methods it adopted in computing CP&P'S withdrawal liability;

(d) At least ten percent of CLPT's unfunded vested liabilities result from a clear and flagrant breach of the trustee's fiduciary obligations, and the trustees are attempting to shift the damage caused by their own breach of fiduciary duty to withdrawing employers like CP&P;

(e) The arbitrator refused to consider and apply the reasonable actuarial assumption for interest rates, the market interest rates were for zero-risk U.S. government securities as reflected in the Buck Forward Interest Rates submitted into evidence during the hearing;

(f) CP&P should have been awarded attorney's fees for prevailing on the Cen-Vi-Ro contributions issue during the second phase of the proceeding.

WHEREFORE, plaintiff requests entry of an order granting it the following relief:

1. A declaration that CP&P withdrew from CLPT during 1979 prior to the effective date of MPPAA;

2. Vacating the arbitrator's decision awarding withdrawal liability against CP&P;

3. Alternatively vacating the portions of the arbitrator's decisions finding the actuarial assumptions used by CLPT were reasonable when viewed in the aggregate, taking into account the experience of the plan, and determining instead that CP&P's withdrawal liability would be a maximum of $41,523.15, plus interest;

4. Awarding CP&P's reasonable attorney's fees and costs incurred in the arbitration;

5. Awarding CP&P its reasonable attorney's fees and costs incurred in litigating this action; and

6. Granting CP&P such other and further relief as the court deems appropriate.

DATED: September 15, 1988.

By: /s/ Jeffrey Owensby
JEFFERY OWENSBY, An
Attorney with the firm
Diepenbrock, Wulff, Plant &
Hannegan, Attorneys for Plaintiff

JMN12/07

(Exhibits to Complaint Omitted in Printing)

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The Construction Laborers Pension Trust For
Southern California

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CONCRETE PIPE & PRODUCTS COMPANY OF CALIFORNIA, Plaintiff, v. CONSTRUCTION LABORERS PENSION TRUST FOR SOUTHERN CALIFORNIA, Defendant.	Case No. 88-05759 THE CONSTRUCTION LABORERS PENSION TRUST'S ANSWER TO THE COMPLAINT AND THE TRUST'S COUNTERCLAIM AGAINST CONCRETE PIPE & PRODUCTS COMPANY OF CALIFORNIA
CONSTRUCTION LABORERS PENSION TRUST FOR SOUTHERN CALIFORNIA, Counterclaimant, v. CONCRETE PIPE & PRODUCTS OF CALIFORNIA, Counterdefendant.	(Filed Nov. 15, 1988)

ANSWER

1. Defendant Construction Laborers Pension Trust for Southern California ("Trust") answers the complaint of Concrete Pipe & Products Company of California ("Concrete Pipe") as follows:

Jurisdiction And Venue

2. Answering paragraphs 1 through 8, defendant admits all allegations.

Allegations Regarding Arbitration

3. Answering paragraph 9, defendant admits all allegations.

4. Answering paragraph 10, defendant admits that arbitrator Kenneth M. Schwartz issued his decision concluding that CP&P's withdrawal was covered by MPPAA, and that CP&P would be liable for payment of its share of the unfunded vested liability of the pension plan. Defendant also admits that a copy of the arbitrator's decision on the first phase of the proceeding is attached as Exhibit A to the complaint. Defendant denies that arbitrator Schwartz erroneously determined that CP&P withdrew during 1981. Instead, arbitrator Schwartz's decision that Concrete Pipe was liable for withdrawal liability is correct.

5. Answering paragraph 11, defendant denies that arbitrator Schwartz erroneously found that CP&P was liable for withdrawal liability in the amount of $190,465.57, plus interest. Instead, as alleged in the accompanying counterclaim, the Trust contends in the

alternative that the award of the arbitrator was correct, or if not correct, was for too low a figure and should instead for be for the original amount assessed the plaintiff of $268,168.81 plus accrued interest, attorneys' fees, and costs. Defendant admits all other allegations of paragraph 11.

6. Answering paragraphs 12 through 14, defendant denies all allegations.

Prayer for Relief

7. Wherefore, defendant requests a judgment in its favor granting the following relief:

a. That the complaint brought by Concrete Pipe be dismissed with prejudice,

b. That the Court enforce the arbitrator's award as issued or

c. Alternatively, modify the arbitrator's award as set out in the second count of the counterclaim,

d. Award defendant Trust its reasonable attorneys' fees and costs incurred in the arbitration and during Court proceedings both in the District Court and before the Ninth Circuit, and

e. Grant defendant Trust such further and other relief as the Court deems proper.

COUNTERCLAIM

8. As a counterclaim, counterclaimant The Construction Laborers Pension Trust for Southern California

("Trust") alleges against counterdefendant Concrete Pipe & Products Company of California ("Concrete Pipe") as follows:

Jurisdiction and Venue

9. This Court has jurisdiction of this counterclaim pursuant to 28 U.S.C. §1331, 29 U.S.C. §186(c), 29 U.S.C. §1401, and 29 U.S.C. §1451. In addition, this Court has jurisdiction of this counterclaim pursuant to Federal Rule of Civil Procedure 13.

Allegations Pertaining to All Counts

10. Defendant Concrete Pipe contributed to the Trust pursuant to a collective bargaining agreement entered into by Concrete Pipe and by its predecessor Cen-Vi-Ro Concrete Pipe & Products Co., Inc.

11. Counterclaimant Trust is a multi-employer pension trust fund established under Title 29 of the United States Code.

12. The Trust contends, and continues to contend, that Concrete Pipe has an obligation to pay withdrawal liability under the Multi-Employer Pension Plan Amendments Act of 1980 to the Trust in the principal amount of $268,168.81 plus accrued interest, attorneys' fees, and costs of collection. Concrete Pipe has, and continues to, deny liability for that amount, or for any other amount.

13. To enforce its assessment of withdrawal liability, on October 5, 1982, the Trust filed a complaint for collection of withdrawal liability in the Central District of

California, United States Court. That case was assigned Case No. 82-5184.

14. On October 6, 1982, Concrete Pipe filed a complaint seeking declaratory and injunctive relief to stop collection of withdrawal liability in the Eastern District which was assigned Case No. 82-389.

15. Subsequently, both cases were consolidated in the Central District under Case No. 82-5184. After cross-motions for summary judgment, the Court ordered the matter to arbitration.

16. This action is duplicative of the above-mentioned consolidated actions which are also pending before the Court and should therefore be consolidated with those other two cases.

17. After bifurcating the arbitration into two phases, one within which to determine liability and the second within which to determine the amount of withdrawal liability, the arbitrator held hearings and issued his award that Concrete Pipe & Products Company was liable for withdrawal liability in the amount of $190,465.57, plus interest. Copies of the arbitrator's opinions for the first and second phases and his award after completion of the second phase are attached as Exhibits A and B to the complaint of Concrete Pipe. They are incorporated herein by this reference.

18. In this counterclaim the Trust contends below that the Court should reach one of two decisions in reviewing the arbitrator's award. First, as alleged in Count One, the award should be modified to include the one year of contribution history that the arbitrator did

not consider in calculating 'the amount of withdrawal liability. Alternatively, should the Court determine that the one year contribution history was properly excluded, the Court should grant the relief requested in Count Two by affirming the arbitrator's award, plus entering an order awarding attorneys' fees and costs of suit, both in the District Court and before the arbitrator, in favor of the Trust.

Count One

19. The arbitrator's decision should be modified as follows:

a. In determining the amount of withdrawal liability for which Concrete Pipe was liable, the arbitrator improperly deducted one year of contribution history to the Trust made by the employer who sold the ongoing business to Concrete Pipe. When Concrete Pipe purchased the ongoing business, and continued its obligation to contribute to the Trust, Concrete Pipe inherited its predecessor's contribution history and is liable for its full share of the withdrawal liability based on the total contributions.

Count Two

20. Alternatively, should the Court determine that the arbitrator properly excluded the one year of contribution history prior to Concrete Pipe's purchase of the ongoing business, the arbitrator's award should be confirmed as issued, except that in addition, the Court should award the Trust its reasonable attorneys' fees and

costs, incurred both before the arbitrator and in the prior and present District Court and Ninth Circuit proceedings.

Prayer for Relief

21. Wherefore, the Trust prays for relief as follows:

a. The Court should modify the arbitrator's award to provide for a finding and award of withdrawal liability in the principal amount of $268,168.81,

b. Alternatively, the Court should enter its judgment affirming and enforcing the arbitration award of $190,465.57, plus interest,

c. Regardless, under either of the above awards, the Court should in addition award the Trust its attorneys' fees and other costs of suit in both the Court proceedings and the arbitration, and

d. The Court should award the Trust such further relief as proper.

COX, CASTLE & NICHOLSON

November 15, 1988

By: /s/ Everitt G. Beers
Everitt G. Beers

Attorneys for The Construction Laborers Pension Trust for Southern California

(Exhibits to Answer and Counterclaim Omitted in Printing)

(Certificate of Service Omitted in Printing)

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

CONSTRUCTION LABORERS PENSION TRUST FOR SOUTHERN CALIFORNIA	)	CV 82-5184 HLH CV 88-5759 HLH
Plaintiff	)	ORDER RE CROSS MOTIONS TO VACATE/ MODIFY/CONFIRM ARBITRATION AWARD
vs.	)	
CEN-VI-RO CONCRETE PIPE AND PRODUCTS	)	
Defendant	)	(Filed Jul. 5, 1989)

The motion of Concrete Pipe and Products Company of California, Inc. (hereinafter CPP), is treated as a petition to vacate the arbitration award, and is denied. The motion of Construction Laborers Pension Trust (hereinafter CLPT) to confirm the arbitration award is granted. To the extent that the motion to confirm the award seeks to "modify" the award, such is treated as a motion to vacate and is denied. The judgment is to be entered confirming said award, plus interest from the filing of case CV 82-5184, plus attorney's fees for the court litigation (but not the arbitration proceeding). CLPT is to submit the form of judgment.

This order will serve as the findings of fact and conclusions of law unless either party wishes more formal findings and conclusions, in which case, same shall be drafted by CLPT. Attorney's fees shall be claimed on the cost bill, with a supplementary declaration or declarations setting forth the basis of the fees claimed. The Court adopts as its findings and conclusions the opinions of the

arbitrator except as specifically set forth, and makes certain additional findings and conclusions herein.

1. PRIOR PROCEEDINGS IN THIS COURT

The Court adopts the legal conclusions of Judge Lucas in his determinations of 4/4/84. It is noted that the Ninth Circuit declined to consider an appeal as to those conclusions. With the rendering of final judgment herein, those conclusions may now be reviewed (except, perhaps, as they have become moot).

2. CONSTITUTIONALITY OF MPPAA

The Court will not declare any of the provisions of MPPAA unconstitutional. While a district court can presumably reach a conclusion that a statute is unconstitutional in whole or in part, such is normally done by appellate courts who are charged with the necessary constitutional wisdom by virtue of their institutional position in the judicial hierarchy.

Furthermore, the Ninth Circuit has held constitutional many of the provisions of MPPAA which CPP challenges, with the implication being that the rest is also constitutional *See Board of Trustees v. Thompson Building Materials*, 749 F.2d 1396 (9th Cir. 1984). Only one aspect of the Act has been declared unconstitutional. *See United Retail and Wholesale Employees v. Yahn & McDonnell, Inc.*, 787 F.2d 128 (3rd Cir. 1986), aff'd by divided Court, 481 U.S. 735 (1987). While the affirmance got three votes in the Supreme Court, it did not get five and is thus not binding here.

The Ninth Circuit's decision in *Thompson* is, however, binding on this court (and on any three judge panel of the Ninth Circuit), and the Court will follow it. CPP argues that the facts of this case are distinguishable from those in *Thompson* on the grounds that the Ninth Circuit decision was premised on a factual conclusion that the trustees did not have a conflict of interest, while the trustees in the case at hand do. The Court rejects this line of reasoning. It does not read the *Thompson* as being limited to the specific facts of that case. To the extent that the arguments that the Trustees of CLPT have a conflict in making presumptively valid determinations has constitutional merit, such arguments should be presented to the Court of Appeals, presumably *en banc*.

3. WITHDRAWAL LIABILITY

The primary dispute between that parties is the date of withdrawal from the plan. Under MPPAA, an employer may be liable for complete withdrawal liability where it either: 1) permanently ceases to have an obligation to contribute under the plan; or 2) permanently ceases all covered operations under the plan. *See* 29 U.S.C. § 1383(a). The arbitrator concluded that the closing of the Shafter plant in late 1979 – early 1980 (prior to the date of MPPAA effectiveness) was merely temporary, as shown, *inter alia*, by the reopening of the plant in 1981, causing withdrawal liability to be created as of the date that CPP's obligation under its collective bargaining agreement ended.

A. Standard of Review

As noted above, the Court will not second guess Judge Lucas' determination that the date of complete withdrawal is a question to be decided in the first instance by the arbitrator. The factual finding of the arbitrator regarding the date of withdrawal from the plan is to be upheld unless it is against the "clear preponderance" of the evidence. *See* 29 U.S.C. § 1404(c). Presumably this means more than a mere preponderance and something less than a "clearly erroneous" standard.

CPP argues that a *de novo* standard of review is appropriate for all of the conclusions reached by the arbitrator with respect to the issue of liability. However, the Court believes that the more deferential standard of § 1404(c) must be applied to the findings of fact, including the factual inferences drawn from the facts by the arbitrator.

B. Permanence of Closing of Shafter Facility

The factual findings of the arbitrator regarding the date of withdrawal from the plan are not contradicted by a clear preponderance of the evidence. In challenging the findings of the arbitrator, CPP makes several assumptions which the Court does not accept. CPP assumes that whether a business permanently ceases "all covered operations" under the plan is dependent only (or primarily) on its subjective intent when it closes a plant. It also assumes that only its intent with regard to the operation of a particular plant is to be considered. And, it further assumes that subsequent events may not be looked at in

determining whether all covered operations have ceased. The Court agrees with none of these assumptions.

As to the intent at the closing of the plant, the Court does agree with CPP that such is not wholly irrelevant and is one fact to consider among many facts, but does not agree that such intent at a particular time is factually or legally determinative of the issue to the exclusion of other facts.

Here the evidence is consistent with the conclusion drawn by the arbitrator that CPP did not intend to permanently cease operations at the Shafter plant, but that CPP merely closed what was apparently at the time an uneconomical operation. When the plant again became economical, it was reopened for a period, thus demonstrating that the closing was conditional. As powerfully set out by the arbitrator, CPP's retention of the site, the sending of salesmen into the area, and the negotiation and conclusion of a contract for which the plant was later reopened, all negate an intent to abandon permanently the covered operations at the Shafter plant. Thus, the arbitrator had sufficient basis to conclude that the date of cessation of the obligation to pay benefits (which was after the effective date of MPPAA) was the date of complete withdrawal.

CPP argues that the facts on which the arbitrator relied have other explanations. For example, CPP claims that the reason it continued to renew leases on the property was solely to avoid having to clear the site as required by its lease. The Court notes that this explanation is not wholly convincing, since renewal of the lease would only postpone the inevitable cost of clearance,

assuming permanent cessation. More importantly, the conclusions of and the inferences drawn by the arbitrator are reasonable and support the decision, which is not contrary to the clear preponderance of the evidence, or indeed, contrary to a mere preponderance.

The fact that the plant was reopened when a favorable economic opportunity arose is itself strong evidence that it was not permanently closed, but only closed during the pendency of a particular economic condition. The Court will not interfere with the factual determination of the arbitrator.

CPP argues that the arbitrator's decision "does violence" to the statutory scheme of MPPAA. It points to 29 U.S.C. § 1387 (which allows waiver or reduction of liability where a withdrawing employer later reenters a plan). CPP concludes that this section proves that an employer may withdraw from a plan multiple times, and thus, that withdrawal must be determined on the date the plant was closed without reference to subsequent events. The Court rejects this line of reasoning. Section 1387 is designed to deal with a different problem: where liability is assessed, but the withdrawal turns out not to have been permanent. That situation is not presented by the facts at hand. In fact, Section 1387 could be interpreted in a manner exactly contrary to CPP's analysis. That section may indicate that only withdrawals which turn out based on subsequent developments to have been permanent establish full liability under MPPAA.

Finally, the Court rejects the claim that its decision will result in violation of the purposes of MPPAA. CPP asserts that acceptance of the "mothballing" theory will

result in plans being strung along by an employer with claims that a cessation of covered activity is merely temporary. However, as noted above, the terms of MPPAA deal with the problem of withdrawals that appear permanent but later prove to have been temporary. *See* 29 U.S.C. § 1387. The obvious solution is to assess liability against such an employer and allow it to later move under Section 1387 for a recovery.

4. AMOUNT OF WITHDRAWAL LIABILITY

Both sides challenge the arbitration award as to the amount of liability. The CLPT asserts that the arbitrator erred in not including the contribution history of CEN-VI-RO (the prior owner of the facility in question, which sold the plant to CPP in 1976). CPP, on the other hand, claims that the actuarial assumptions used by the plan are unreasonable, that the sum assessed includes liabilities which were the result of a breach of fiduciary duty by CLPT, and that the trust ignored its actuary's policy with respect to discount rates where an employer pays in a lump sum.

A. CLPT's Claims

The Court rejects the trust's challenges to the amount of withdrawal liability. The Court agrees with the arbitrator that MPPAA does not mandate consideration of the prior contribution history of CEN-VI-RO. *See* Arbitration Award of August 16, 1988 at pp. 10-17. 29 U.S.C. § 1384(b) is limited to situations where liability is escaped by a seller of covered assets under § 1384(a). Likewise, the doctrine of successor liability is inapplicable, since there

was no notice that CPP would acquire MPPAA liability (the Act had not even been passed on the date of the acquisition).

B. CPP's Claims

The Court also rejects the challenges of CPP to the amount of liability. CPP earnestly insists that that it is unconstitutionally unfair for an interested party to make a determination which binds its adversary and to have that determination given presumptive effect by the courts or arbitrators. However, the statute so provides, and, as set forth above, this has been approved by the Ninth Circuit. Thus, CPP has the burden of showing that the actuarial assumptions were "in the aggregate unreasonable" or that the "plan's actuary made a significant error in applying the actuarial assumptions or methods. *See* 29 U.S.C. § 1401(a)(3).

The plan's actuary had the significant fortifying feature of being the most widely recognized in the field, with massive experience nationwide in advising pension trustees. CPP attacked the assumptions with an actuary of vastly less experience (in fact no experience with multi-employer trusts). While the use of any economic prediction factor can be debatable, the Court cannot say, or come close to saying, that the conclusions of the arbitrator are against the clear preponderance of evidence. The Court accepts the reasoning of the arbitrator in this respect and adopts his findings.

The Court also rejects the claim raised by CPP that the calculated liability includes amounts that are the result of violations of fiduciary duty by the trustees. CPP

has no standing to complain about a trust policy that extended the amount of time necessary for vesting (to 15 years) and increased the pensions of already vested employees (by 10%). *See Ponce v. Construction Laborers Pension Trust of Southern California*, 774 F.2d 1401 (9th Cir. 1985). Furthermore, the *Ponce* case did not hold that the *increase* in the pensions was a breach of duty, but that the overly long vesting period was. Thus, the holding provides no support for CPP.

Finally, the Court does not accept the claim that the trust violated its own actuary's policy of calculating withdrawal liability at a higher discount rate where an employer is willing to pay in a lump sum. That policy is designed to lower liability where the trust is not required to accept interest rate and other economic risk because an employer pays its withdrawal liability completely upfront. CPP has not done so. In fact, to this day, it has not paid its liability and professes that it intends to delay so doing until it has a chance to appeal to the Circuit Court.

5. ATTORNEY'S FEES AND COSTS

CLPT is entitled to its fees and costs for the court work. *See Lads Trucking Co. v. Board of Trustee*, 77 [sic] F.2d 1371 (9th Cir. 1985)(trust entitled to fees in "action" under ERISA). However, MPPAA appears to leave the question of attorney's fees incurred in an arbitration proceeding to the discretion of the arbitrator. *See* 29 U.S.C. § 1401(a)(2) (arbitrator may award reasonable attorney's fees). In this case, the arbitrator decided that each side should bear its

own attorney's fees. Hence, CLPT may not recover those amounts with respect to the arbitration proceeding.

IT IS SO ORDERED.
DATED: 7/3/89

/s/ Harry L. Hupp
HARRY L. HUPP
United States District Judge

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES/CLOSING

Case No. CV83-132-HLH Date 7/7/89

Title Concrete Pipe & Products Co. of Ca. v. The Construction Laborers Pension Trust for S. Ca

Present HARRY L. HUPP, Judge

Robert Bolton	not present
Deputy Clerk	Court Reporter

Attorneys for Plaintiff	Attorneys for Defendant

Proceedings: [ ] In Court
[XX] In Chambers
[ ] Counsel Notified

[ ] Case previously closed in error. Make JS-5.

[ ] Case should have been closed on entry dated _____. Make JS-6.

[ ] Case settled but may be reopened if settlement is not consummated within _____ days. Make JS-6.

[X] Other: The Order in CV82-5184-HLH and CV88-5759-HLH dated July 5, 1989 is also applicable to this case and the proposed judgment should include the case number. (Ent. 07/10/89) JS-6.

[ ] Entered _____.

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CV 74 (3/87)

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

CONSTRUCTION LABORERS PENSION TRUST OF SOUTHERN CALIFORNIA, Plaintiff, vs. CEN-VI-RO CONCRETE PIPE & PRODUCTS CO., Defendants.	)	No. CV 82-5184-HLH (JRx) No. CV 83-132-HLH No. CV 88-5759-HLH (JRx) NOTICE OF APPEAL
CONCRETE PIPE AND PRODUCTS COMPANY OF CALIFORNIA, a California Corporation, Plaintiff,	)	(Filed Aug. 4, 1989)

v.

CONSTRUCTION LABORERS PENSION TRUST FUND FOR SOUTHERN CALIFORNIA,

Defendant.

NOTICE IS HEREBY GIVEN that Concrete Pipe and Products of California, Inc., defendant in case no. CV 82-5184-HLH, above, plaintiff in case no. CV 83-132-HLH above, and plaintiff/petitioner in case no. CV 88-5759-HLH, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the orders regarding cross-motions to vacate/modify/confirm arbitration entered on July 5, 1989, and July 10, 1989, in cases 82-5184-HLH, 88-5759-HLH, and 83-132-HLH, respectively. Defendants also appeal from the order of Judge Malcolm Lucas filed April 4, 1984, in case numbers 82-5184-MML, 83-132-MML as that order has now become final and appealable pursuant to *Construction Laborers Pension Trust v. Cen-Vi-Ro Concrete Pipe and Products Company, Inc.*, 776 F.2d 1416 (9th Cir. 1985).

Pursuant to Local Rule 17.1, the names of all parties to the judgment and order are Concrete Pipe and Products of California, Inc. and Construction Laborers Pension Trust for Southern California. These two parties constitute all parties to all three actions consolidated in the judgments and/or orders referred to above. The attorneys for Concrete Pipe and Products are Dennis R. Murphy and James M. Nelson, Diepenbrock, Wulff, Plant &

Hannegan, P.O. Box 3034, Sacramento, California, 95812-3034. The attorneys for Construction Laborers Pension Trust for Southern California is Everett G. Beers, Cox, Castle & Nicholson, 2049 Century Park East, 28th Floor, Los Angeles, California, 90067.

DATED: August 3, 1989. DIEPENBROCK, WULFF, PLANT & HANNEGAN

By: /s/ James M. Nelson
JAMES M. NELSON,
Attorney for Concrete Pipe and Products Co., Inc.

JMN19/29

(Certificate Of Service Omitted In Printing)

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

BOARD OF TRUSTEES OF THE CONSTRUCTION LABORERS PENSION TRUST FOR SOUTHERN CALIFORNIA,	No. 89-55854
Plaintiff-Appellee,	D.C. No. CV-82-5184-HLH
v.	**MEMORANDUM***
CONCRETE PIPE AND PRODUCTS OF CALIFORNIA, INC.,	(Filed Jun. 27, 1991)
Defendant-Appellant.	

Appeal from the United States District Court
for the Central District of California
Harry L. Hupp, District Judge, Presiding
Argued and Submitted May 6, 1991
Pasadena, California

Before: HUG, NORRIS, and LEAVY, Circuit Judges

We affirm the district court's decision. Whether Concrete Pipe & Products of California ("Concrete Pipe") withdrew from the employee benefits plan before the Multi-Employer Pension Plan Amendments Act of 1980

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

("MPPAA") was properly sent to arbitration. *See Teamsters Pension Trust Fund Bd. of Trustees of Western Conf. v. Allyn Transp. Co.*, 832 F.2d 502, 505 (9th Cir. 1987).

We affirm the arbitrator's calculation of withdrawal liability for the reasons stated by the district court.

Concrete Pipe's constitutional challenges to the MPPAA are controlled by *Connolly v. Pension Benefit Guaranty Corp.*, 475 U.S. 211, 224 (1986) and *Board of Trustees v. Thompson Bldg. Materials, Inc.*, 749 F.2d 1396, 1400 (9th Cir. 1984), *cert. denied*, 471 U.S. 1054 (1985).

Appellees are entitled to attorney's fees on appeal pursuant to 29 U.S.C. § 1132(g)(2)(D). *See Lads Trucking Co. v. Bd. of Trustees of Western Conf. of Teamsters Pension Trust Fund*, 777 F.2d 1371, 1375-76 (9th Cir. 1985).

AFFIRMED.

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

BOARD OF TRUSTEES OF THE CONSTRUCTION LABORERS PENSION TRUST FOR SOUTHERN CALIFORNIA,	No. 89-55854
Plaintiff-Appellee,	D.C. No. CV-82-5184-HLH
v.	**ORDER**
CONCRETE PIPE AND PRODUCTS OF CALIFORNIA, INC.,	(Filed Sep. 24, 1991)
Defendant-Appellant.	

Before: HUG, NORRIS, and LEAVY, Circuit Judges

The panel, as constituted above, has voted unanimously to deny the petition for rehearing and to reject the suggestion for a rehearing en banc.

The full court has been advised of the suggestion for en banc rehearing and no judge of the court has requested a vote on the suggestion for rehearing en banc. Fed. R. App. P. 35(b).

The petition for rehearing is **DENIED**, and the suggestion for a rehearing en banc is **REJECTED**.